

Consumer Advocacy in the Implementation of the Ticket to Work Act

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Consumer Advocacy in the Implementation of the Ticket to Work Act

Executive Summary

On December 17, 1999, the Ticket to Work and Work Incentives Improvement Act of 1999 (TTW) (Public Law 106-170) was signed into law. TTW recognizes that the obstacles facing beneficiaries as they attempt to exit the SSI and/or DI roles are complex and that a comprehensive set of reforms is necessary to assist individuals to maximize their economic self-sufficiency. First, beneficiaries should be allowed to choose the services they need to assist them in achieving their employment goals and direct their own careers. Second, beneficiaries seeking to obtain employment or increase earnings often face a loss of health care coverage, a risk that is often viewed as more significant than the loss of the cash benefit itself. Third, the complexity of SSA regulations and work incentives often creates a disincentive to employment, as beneficiaries worry that any attempt to return to work will result in a total loss of their cash benefit and Medicaid or Medicare coverage. Fourth, beneficiaries need access to accurate and independent information on work incentives and the impact of employment on their benefit and health care status.

A major component of the overall TTW strategy is the Ticket to Work and Self-Sufficiency Program (TTW). The TTW program, in combination with other components of the TTW legislation, provides SSA beneficiaries significant opportunities to control their own lives and direct their own careers. At the same time, TTW changes the basic nature of the relationship between beneficiaries and the network of agencies, organizations, and individuals traditionally responsible for providing rehabilitation and employment services. Without a carefully constructed system of checks and balances, and constant vigilance on the part of SSA, advocacy organizations, and beneficiaries themselves, beneficiaries attempting to return to work may actually be harmed. Conflicting interests among Vocational Rehabilitation (VR) agencies, Employment Networks (ENs), Benefits Planning, Assistance, and Outreach (BPAO) programs, and Protection and Advocacy for Beneficiaries of Social Security (PABSS) programs may lead to practices and strategies that limit choice and opportunities for persons with disabilities.

The Protection and Advocacy for Beneficiaries of Social Security (PABSS) program was created to ensure that the rights of beneficiaries are protected as they attempt to pursue their employment goals. PABSS programs have a wide-ranging mandate. They are required to: (1) investigate complaints related to improper or inadequate services provided to beneficiaries, (2) provide information and referral services to beneficiaries, including information on work incentives, (3) provide consultation and legal advocacy on behalf of beneficiaries, (4) assist and represent beneficiaries in disputes with SSA, (4) provide information and technical assistance to government agencies, and (5) advocate to identify and correct deficiencies in entities providing employment services and supports to beneficiaries. Recent revisions in their authority now allow them to assist beneficiaries in disputes with SSA involving overpayments and other post-entitlement earnings problems. Yet, the minimal funding allocated to the program makes it difficult for PABSS programs to meet even a small percentage of the demand for all these services.

The PABSS program is a relatively small protection and advocacy program designed to complement and supplement existing programs rather than to create a large new program structure. In fiscal year 2003, the majority of states received \$100,000 to operate the PABSS program. The Native American P&A received \$50,000, as did American Samoa, Guam, and the Mariana Islands. Only 15 states received more than \$100,000, with four states (California, Florida, New York and Texas) receiving more than a \$200,000 allocation. In most states, funding is sufficient for the creation of a single position. In practice, most states have used these funds to partially support a number of positions, in order to maximize the number of staff members able to serve beneficiaries under the program

This paper identifies ways in which actions on the part of agencies and organizations involved in the implementation of the TTW program can intentionally or unintentionally hurt beneficiaries and provides recommendations that will reduce or eliminate the potential for harm. Eleven areas are identified in which policies, regulations or practices may directly harm TTW participants. Detailed recommendations for addressing these concerns are provided. The eleven areas of concern and major recommendations under each area are provided below.

Concern #1 - PABSS programs presently lack the capacity and resources to adequately represent beneficiaries in disputes with ENs, BPAOs, VR agencies, and SSA.

1. **Represent Beneficiaries in Disputes with SSA** - PABSS programs should be allowed to assist and represent beneficiaries in overpayment situations or other disputes with SSA. The revised terms and conditions for the program allow PABSS projects to provide this service to beneficiaries. However, the extent to which individual state P&As feel they have the capacity and expertise to perform this function is unclear. SSA should encourage PABSS to prioritize this activity and ensure that the projects have sufficient resources to undertake this role. SSA should reaffirm the important role of PABSS programs in the direct representation of beneficiaries in disputes with SSA. This is an important function and employment support that should be available to beneficiaries. PABSS programs are uniquely positioned with both the legal and programmatic expertise to provide support to beneficiaries who are attempting to maintain employment and economic self-sufficiency.
2. **Increase Resources Available to PABSS Programs** - PABSS programs should have sufficient resources to enable them to effectively serve all beneficiaries who request their support in addressing post-entitlement earnings problems. Funding should be sufficient to enable PABSS programs to represent beneficiaries in disagreements with SSA, the PM, ENs, State VR agencies, BPAO programs and other entities involved in implementation of the TTW Act. More broadly, resources should be available to enable PABSS programs to assist individuals in disputes regarding the complete array of SSA programs and work incentives, including Plans for Achieving Self-Support (PASS), Impairment Related Work Expenses (IRWE), wage reporting, 1619a and 1619b, CDR protections, expedited reinstatement (EXR), Medicaid buy-in programs, extended Medicare eligibility, and other related issues.

Concern #2 - PABSS programs presently lack the authority to engage in systems advocacy activities.

1. **Engage in Systems Advocacy Activities** - PABSS programs should be allowed to engage in systems advocacy in situations in which this activity will promote beneficiaries participation in the TTW program. SSA should allow PABSS programs to engage in systems advocacy activities in direct support of beneficiaries' participation in the TTW program. PABSS programs may be able to play a significant role in insuring that the actions of state and local entities are consistent with SSA's goals for the TTW program. Given the level of resources available in the TTW program, however, systems advocacy activities should only be performed in situations where the activities won't impair the ability of a PABSS program to meet the needs of all individual beneficiaries seeking its support. Systems advocacy activities should be concentrated on state and local issues and entities, as opposed to focusing exclusively on federal issues.

Concern #3 - PABSS programs presently lack the authority to represent beneficiaries no longer in cash benefit status.

1. **Provide Services to Individuals not in cash benefit status** - PABSS programs should be allowed to provide services to otherwise eligible individuals who are not currently in cash benefit status. Current program rules do not allow beneficiaries who are not in cash benefit status, such as persons in the Extended Period of Eligibility (EPE) or 1619b, to be served by PABSS projects. Legislative and regulatory changes should be made immediately to allow these individuals to be served. Individuals in EPE or 1619b are by definition likely to be employed and earning significant wages. As such, they are likely to have regular contact with an EN, VR agency, or other employment support organizations. They are also more likely than other beneficiaries to need support in post-entitlement earnings disputes with SSA. Therefore, it is imperative that the services provided by the PABSS projects should be available to these individuals.

Concern #4 - Beneficiaries may lack sufficient information about the TTW program, as well as all other aspects of the TTW legislation. If beneficiaries are unable to access complete and accurate information about the program, they will be unable to make informed choices about whether or not to assign their Tickets and select an appropriate service provider.

1. **Modify Information Materials** - The current materials being used to inform beneficiaries about the program should be reviewed and revised to ensure the program specifics are being accurately explained and represented. Supplemental materials should be developed as necessary to explain the more difficult to grasp concepts.
2. **Clarify Roles** - Beneficiaries should not be forced to contact the Program Manager, State VR agency, an EN and a BPAO in order to obtain basic information about the program. The Program Manager should retain responsibility for providing basic information, but for many beneficiaries a single phone call may not be sufficient to enable them to understand many of the details of the program. The BPAO network should assume increased responsibility for this effort. However, the BPAO program capacity is limited, and resources should be carefully allocated to insure that services are provided to the

greatest number of individuals possible. State VR agencies and ENs should not spend significant time and resources to provide basic information about the program to beneficiaries, since they are not compensated for this function and staff members in the programs receive far less training on TTW than the Program Manager and the BPAOs.

3. **Collaborative Outreach Activities** - SSA should initiate additional outreach activities that will increase general knowledge of TTW among beneficiaries and organizations that currently serve beneficiaries. Entities such as SSA Field Offices (FOs), CILs, psychosocial rehabilitation or mental health centers, BPAO programs, community rehabilitation programs, advocacy organizations, SSA FOs, and One-Stop Career Centers could all play a key role in providing accurate information to beneficiaries and encouraging them to consider participation in the program.

Concern #5 - Beneficiaries may lack complete and accurate information on the impact of employment or increased earnings on their benefit status and/or health care coverage. Inaccurate information may have a detrimental impact on consumers' economic independence.

1. **Provide Early Access to Benefits Planning and Assistance Services** - SSA should work with the Ticket Program Manager, State Vocational Rehabilitation agencies, and Employment Networks to insure that benefits planning and assistance supports are available to beneficiaries early in the Ticket to Work process. When a beneficiary contacts the Ticket Program Manager, he or she should continue to receive information about the availability of BPAO services in the local area, as well as the type of services provided by BPAOs. Clear policies should be developed regarding the extent to which Program Manager staff members should provide work incentive information to beneficiaries. Similarly, State VR agencies should provide information about BPAOs to the hundreds of beneficiaries who contact them during the initial stages of ticket rollout. Technical assistance should be provided to local ENs so that they understand the importance of BPAO services and assist potential ticket holders to access the service.
2. **Provide Early Access to PABSS program services** – Beneficiaries should receive information about the protection and advocacy services available through the state PABSS program throughout their employment experiences. All mailings from SSA and the PM should contain clear information that makes beneficiaries aware of the PABSS program, describes the types of services provided, and provides contact information for PABSS services. While it is crucial that beneficiaries receive this information at the time they receive their Ticket, information should be provided throughout the course of individuals' employment experiences. ENs should inform Ticket holders of this service at the time of IWP development. BPAOs should inform beneficiaries of this service at the time that they provide information regarding wage reporting, CDR protections, IRWEs, expedited reinstatement, and many other work incentives. PABSS programs should be actively involved in any outreach activities conducted by ENs, VR agencies, BPAOs, or other members of the TTW network.

3. **Increase the Capacity of the National BPAO Program** - SSA should assess the capacity of the national BPAO network and insure that a sufficient number of benefits specialists are available to meet existing demand for the service and adequately serve beneficiaries attempting to participate in the Ticket to Work program. Initial data from the national VCU BPAO database indicate that the number of beneficiaries served by a BPAO program increased by 50% when the Ticket was launched in a state. In some Round 1 Ticket states, local BPAO programs reported difficulties in responding to the overwhelming demand for services. In some instances, BPAOs have been forced to make beneficiaries wait up to two weeks for initial appointments. In other communities, BPAOs have sharply curtailed outreach activities to avoid creating a demand that they cannot meet.
4. **Encourage BPAO, EN, PABSS, VR Collaboration** - SSA should encourage BPAOs to collaborate with State VR agencies and ENs to conduct orientation sessions for beneficiaries. In a number of rollout states, ENs have conducted orientation sessions for beneficiaries who have indicated an interest in participating in the TTW program. These orientation sessions may include representatives of the State VR agency, a local BPAO, and the PABSS program. These sessions have allowed beneficiaries to understand the services provided by each of these entities, and enabled them to understand the potential impact of Ticket assignment on their benefits in a timely manner.

Concern #6 - Beneficiaries may want to use their Ticket to obtain vocational services and obtain or return to employment, but be unable to locate an Employment Network (EN) willing to accept Ticket assignments.

1. **Identify Active and Inactive ENs** - SSA should determine the number of ENs that are actually accepting Tickets and participating in the program. Nearly 700 EN applications have been approved, but fewer than 200 ENs have accepted Ticket assignments. This information is necessary in order for SSA to determine the actual number of ENs participating in the program and improve approaches to EN recruitment.
2. **Expand the Number of Active ENs** - SSA should continue to recruit and expand the number of ENs operating in all states. To increase the number of ENs providing services through the TTW program, SSA should consider addressing issues such as timely payments for ENs, less burdensome methods for earning verifications, and other concerns that have caused a number of ENs to view the TTW program as more difficult to administer and operate than they had initially envisioned.
3. **Encourage VR Agencies to Support EN Development** - SSA should encourage State VR agencies to promote the development of additional ENs in their states. If VR agencies would alter their agreements with ENs, to reduce the financial risk faced by ENs attempting to serve individuals with significant support needs, many more beneficiaries might have access to ENs willing to accept their Ticket assignment and address their employment needs.

4. **Identify Innovative EN Practices** - SSA should identify those ENs that have engaged in innovative practices that have allowed them to accept large numbers of Ticket assignments, particularly from individuals with significant support needs, analyze the potential for other ENs to replicate these approaches, and then provide technical assistance to ENs to enable them to incorporate these practices into their ongoing operating procedures.

Concern #7 - Beneficiaries who are new applicants to State Vocational Rehabilitation agencies may be unaware that by signing an Individualized Plan for Employment with the State VR agencies they are also assigning their Ticket to the agency, thereby giving up their right to assign their Ticket to any available EN.

1. **Develop SSA/RSA Policies that Insure Consumer Choice** - SSA and RSA should develop a coordinated policy regarding the responsibilities of State VR agencies toward beneficiaries who wish to assign their Ticket to a non-VR EN and yet receive services from the State VR agency. This policy should protect the Ticket holder's right to assign their Ticket to the EN of their choice and be consistent with the requirements of the Americans with Disabilities Act (ADA).
2. **Reconsider Existing Policies Regarding VR Treatment of New Cases** - SSA should reconsider the policies and operational guidance contained in Transmittal 17 to insure that these procedures protect a beneficiary's right to informed choice. Specifically, procedures should be revised if necessary that an individual will not have his or her Ticket assigned to a State VR agency without his or her knowledge and consent.

Concern #8 - Beneficiaries may assign their Ticket to a VR agency or an EN, and then be unable to "unassign" their Ticket and reassign it to a new EN, since potential new ENs will not be willing to share subsequent milestone or outcome payments with the agency that originally provided services.

1. **Modify Written Ticket Materials** - SSA should modify the written materials provided to beneficiaries with their Ticket to inform them of the consequences of signing an IPE with a State VR agency on their Ticket eligibility and their requirement to make timely progress in the use of their Ticket. This information should inform them of their right to unassign the Ticket from the VR agency and indicate that the VR agency may have a claim on payments that result to the VR agency should they unassign their Ticket from the agency and assign it to another EN.
2. **Modify IPE Development Procedures** - SSA and the Rehabilitative Services Administration (RSA) should insure that VR agencies inform Ticket holders of the consequences of signing an IPE on their rights under the Ticket program. Beneficiaries should indicate that they have been informed of these consequences at the time of IPE signing.

Concern #9 - Beneficiaries may assign their Ticket to an EN and later have the EN terminate the Ticket assignment, particularly in situations where the individual is viewed

as too costly to serve, thereby making it difficult for the beneficiary to later reassign the Ticket to another EN.

1. **Insure Access to Required Services** - SSA should insure that all TTW evaluation activities, particularly the beneficiary survey, will investigate the extent to which individuals receive the services specified in their IWPs. In addition, SSA should review its regulations and operating procedures to determine the actions that should be taken in situations where a beneficiary is not receiving specified services.
2. **Increase Awareness of Legal Advocacy Services** - SSA should take all measures necessary to insure that beneficiaries are fully aware of the role and availability of legal advocacy services to support them in resolving conflicts with ENs and/or appealing unfavorable decisions by the multiple entities likely to be involved with a beneficiary participating in the TTW program. ENs should be fully aware of the function of the PABSS program in their state and be able to direct beneficiaries to the PABSS program for services and support.

Concern #10 - Beneficiaries may receive incomplete or inaccurate information from a Benefits Planning, Assistance, and Outreach (BPAO) program that could (1) prevent the beneficiary from making an informed choice regarding assignment of his or her Ticket, or (2) adversely affect an individual's financial status when increased earnings dramatically affect the individual's benefit status or health care coverage.

1. **Implement Quality Assurance Procedures** - SSA should investigate and implement an array of quality assurance strategies to insure that information provided by BPAOs is complete and accurate. This quality assurance initiative could take the form of formal program audits, state-based technical assistance and support, or peer-to-peer support and monitoring.
2. **Coordinate Training and Quality Assurance Across Multiple Federal Systems** - SSA should work with its Federal and State partners to insure that beneficiaries receiving benefits planning and assistance services from MIGs, WIGs, One-Stop Centers, VR agencies receive high quality services. The training provided to individuals providing benefits planning services in these other systems should be equivalent or superior to the training provided to specialists in the SSA BPAO program.
3. **Provide Access to Advocacy Services to Rectify Mistakes** – BPAO program and individual benefits specialists must be held accountable for their actions and recommendations that may have significant negative impacts on a beneficiaries financial or physical well being. If inaccurate or incomplete information is provided by a BPAO, the beneficiary must have free and immediate access to a PABSS program to explore all options available to rectify the results of inaccurate information and insure that such mistakes are not made in the future.

Concern #11 - Beneficiaries may be victims of a conflict of interest in situations in which an entity serves more than one role in the overall TTW initiative, or circumstances in which

an EN or VR agency would be adversely impacted by individuals taking full advantage of work incentives to which they are entitled.

1. **Review and Revise Conflict of Interest Policies**- While some protections are in place to insure that these potential conflicts do not result in disputes among providers or poor service to beneficiaries, SSA should consider a review of potential conflicts of interest, and develop conflict of interest policies.
2. **Modify Information Materials** - Informational materials provided to beneficiaries should encourage them to seek impartial information from BPAOs or PABSS programs, and not rely exclusively on information provided by a VR agency or EN regarding work incentives available to them and/or the impact of Ticket assignment and earnings in their benefits.
3. **Constant Vigilance by the TTW Network** - Identifying and preventing conflicts of interest should be a major focus of all individuals and organizations participating in the TTW initiative. If a PABBS program, EN, BPAO, PM, VR agency, or any other member of the TTW initiative believes that an individual or organization is acting in a way that creates a potential conflict of interest, this concern should be immediately reported to SSA, as well as the PABSS program in the individual state.

The Need for Consumer Advocacy in the Implementation of the Ticket to Work Act

Introduction

On December 17, 1999, the Ticket to Work and Work Incentives Improvement Act of 1999 (TTW) (Public Law 106-170) was signed into law. The primary objective of the Ticket program and other work incentives initiated by PL 106-170 is to “enhance the range of choices available to Social Security disability beneficiaries when they are seeking employment services, VR services and other support services to obtain, regain or maintain self-supporting employment” (*Federal Register*, December 28, 2001, pp. 67372-67373).

TTW recognizes that the obstacles facing beneficiaries as they attempt to exit the SSI and/or DI roles are complex and that a comprehensive set of reforms is necessary to assist individuals to maximize their economic self-sufficiency. First, beneficiaries should be allowed to choose the services they need to assist them in achieving their employment goals and direct their own careers. Second, beneficiaries seeking to obtain employment or increase earnings often face a loss a health care coverage, a risk that is often viewed as more significant than the loss of the cash benefit itself. Third, the complexity of SSA regulations and work incentives often creates a disincentive to employment, as beneficiaries worry that any attempt to return to work will result in a total loss of their cash benefit and Medicaid or Medicare coverage. Fourth, beneficiaries need access to accurate and independent information on work incentives and the impact of employment on their benefit and health care status.

A major component of the overall TTW strategy is the Ticket to Work and Self-Sufficiency Program (TTW). The TTW program, authorized by Title I of TWWIAA, provides a Ticket to eligible SSA beneficiaries that can be used to obtain vocational rehabilitation (VR) or employment services through an Employment Network (EN). The program is based on beneficiary choice. Rather than apply for services from an agency that may reject an individual's application, under TTW the beneficiary is free to *choose* (or to "assign" his or her Ticket to) any participating EN willing and able to provide services that will support the beneficiary's efforts to acquire and maintain employment. TTW represents an attempt to provide Ticket holders a greater selection of qualified service providers to choose from, and to increase competition among providers by encouraging the participation of entities and organizations that have not traditionally served SSA beneficiaries.

The TTW program, in combination with other components of the TTW legislation, provides SSA beneficiaries significant opportunities to control their own lives and direct their own careers. At the same time, TTW changes the basic nature of the relationship between beneficiaries and the network of agencies, organizations, and individuals traditionally responsible for providing rehabilitation and employment services. Without a carefully constructed system of checks and balances, and constant vigilance on the part of SSA, advocacy organizations, and beneficiaries themselves, beneficiaries attempting to return to work may actually be harmed. Conflicting interests among Vocational Rehabilitation (VR) agencies, Employment Networks (ENs), Benefits Planning, Assistance, and Outreach (BPAO) programs, and Protection and Advocacy

for Beneficiaries of Social Security (PABSS) programs may lead to practices and strategies that limit choice and opportunities for persons with disabilities.

The purpose of this paper is to identify ways in which actions on the part of agencies and organizations involved in the implementation of the TTW program can intentionally or unintentionally hurt beneficiaries and to provide recommendations that will reduce or eliminate the potential for harm. The paper is divided into three sections. Section I briefly describes three key components of TTW that most directly affect the experiences of beneficiaries participating in the TTW program. Section II provides an overview of seven major protection and advocacy programs and discusses the unique characteristics of the PABSS program. Section III describes eleven major areas in which policies, regulations or practices may directly harm TTW participants and provides detailed recommendations for addressing these concerns. Emphasis is placed on directly addressing the role of PABSS programs in protecting the rights of beneficiaries participating in the TTW program. The authority of the PABSS program under TTW is compared to other Protection and Advocacy (P&A) programs authorized in Federal legislation. Recommendations are made regarding the extent to which PABSS programs should be involved in representing beneficiaries in administrative procedures against SSA and engaging in systems advocacy activities.

Section I: Major Components of TTW

TTW contains many different components that directly or indirectly impact employment opportunities for beneficiaries attempting to obtain or maintain employment: Among these are the TTW, BPAO, and PABSS programs. Each of these key components is briefly summarized below, with emphasis placed on the role played by each program in insuring that beneficiaries are empowered to make informed choices, choose among services providers, and select their own rehabilitation and employment services.

Ticket to Work and Self-Sufficiency Program – Most individuals between the ages of 18 and 64 who presently receive SSI or DI benefits are eligible to participate in the TTW program. The program provides eligible beneficiaries a Ticket that can be assigned to a VR agency or EN. When a Ticket is assigned, the individual must be provided employment services and supports as specified in a mutually agreed upon Individualized Work Plan (IWP). Once the beneficiary begins working and achieves prescribed earnings criteria, the VR agency or EN begins to receive payments to compensate them for the costs of providing services.

ENs are crucial to the ultimate success of the TTW program. An EN is any qualified entity that has entered into an agreement with SSA to assume responsibility for the coordination and delivery of employment services to beneficiaries who assign their Tickets to the EN. There is no limit to the number of public or private providers that may participate as ENs. Services to beneficiaries are provided through an Individualized Work Plan (IWP). The IWP specifies an employment goal and the services the EN will provide to enable the individual to achieve the goal. As the TTW program was originally initiated, it was anticipated that many ENs would be existing organizations with previous experience providing services to SSA beneficiaries, such as state VR agencies, Independent Living Centers, community mental health service providers, and

other private, non-profit, and public organizations. In addition, it was hoped that the TTW program would encourage participation of employment and community organizations that have not traditionally served the SSA population.

State VR agencies must elect to become ENs if they wish to continue to receive reimbursement from SSA for services provided to beneficiaries. VR agencies have the option of selecting a different payment mechanism for each individual served, unless the individual has previously assigned his or her Ticket to another EN, in which case the VR agency must serve the individual under the payment mechanism previously selected by the first EN.

A beneficiary may “unassign” a Ticket previously assigned to an EN and reassign the Ticket to another EN. If the beneficiary subsequently returns to work and milestone or outcome payments are generated, the Program Manager analyzes the amount and types of services provided by the two ENs and divides the payments equitably between the two ENs. In September 2002, SSA began a mediation and alternate dispute resolution pilot program in Florida, Arizona, and Illinois.

TTW began a three-year phase in period in February 2002. Thirteen states implemented the program in February 2002, another 20 states plus the District of Columbia began the program beginning in November 2002, and the remaining states and territories are scheduled to implement the program nine to 12 months after the Phase 2 states. The 13 states included in the Phase 1 TTW rollout were: Arizona, Colorado, Delaware, Florida, Illinois, Iowa, Massachusetts, New York, Oklahoma, Oregon, South Carolina, Vermont, and Wisconsin. Phase 2 TTW rollout states included Alaska, Arkansas, Connecticut, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, South Dakota, Tennessee, Virginia, and the District of Columbia.

The TTW program is based on a number of assumptions. First, the program assumes that a sufficient number of ENs will be available to allow beneficiaries to choose the service provider that best meets their needs. Second, the program is designed to guarantee that the individual is able to exercise informed choice in decisions related to program participation, Ticket assignment and unassignment, employment goals, and service provider selection. Third, the program assumes that VR agencies and ENs will provide all services and supports specified in the IWP, and that those services will be sufficient to meet the individual's employment needs. Instances in which these assumptions are violated, and the corresponding detrimental effect on beneficiaries, are described in detail in Section II.

Benefits Planning and Assistance – Authorized by Section 121 of the Ticket Act, 116 Benefits Planning, Assistance and Outreach (BPAO) programs are providing services to SSA beneficiaries in all 50 states and five territories. Collectively, the 116 BPAO projects employ over 300 benefit specialists, and have served over 51,000 individuals since implementation in early 2001.

The purpose of the BPAO initiative is to provide SSA disability beneficiaries with accurate and timely information about SSA work incentives and other Federal efforts to remove regulatory and programmatic barriers to employment for persons with disabilities. Trained benefits specialists in local BPAO programs work with individual beneficiaries to explain the myriad of

regulations, provisions, work incentives and special programs that complicate an individual's decision to enter or reenter the workforce. The BPAO programs are funded to make decisions for individuals or tell them what to do. Instead, they allow beneficiaries to make their own informed decisions based on complete and accurate information. In addition, they support individuals who choose to enter employment by assisting them to comply with all relevant regulations and reporting procedures.

The BPAO program has the potential of assisting hundreds of thousands of beneficiaries by allowing Ticket participants to make informed choices about their employment and health care coverage. However, if beneficiaries receive incomplete or inaccurate information from BPAOs it can have dire consequences for the individual's independence and well being. In addition, if the BPAO program is not truly independent from state VR agencies, ENs, or PABSS programs, the potential for conflicts of interest is large. Section II describes several concerns related to the role of BPAOs in the TTW program and offers recommendations to alleviate these concerns.

Protection and Advocacy for Beneficiaries of Social Security – Under a program authorized by Section 1150 of the Ticket to Work and Work Incentives Improvement Act, the Social Security Administration (SSA) awarded grants to Protection and Advocacy Systems (P&As) in every state, in the District of Columbia, in five U.S. territories, and to the P&A for Native Americans. The Protection and Advocacy for Beneficiaries of Social Security (PABSS) program is designed to assist beneficiaries with disabilities in obtaining information and advice about receiving vocational rehabilitation and employment services, as well as legal advocacy and other services that a disabled beneficiary may need to secure or regain gainful employment. In addition, Section 411.605 requires that Employment Networks vendored to provide services to Ticket holders must inform SSI and DI beneficiaries of the availability of assistance from P&As in dispute resolution. Disputes may focus on issues such as Ticket assignment or reassignment, IWP development, legal issues (other than SSA programmatic issues), or related topics.

The PABSS program is intended to protect the rights of beneficiaries participating in the TTW program, as well as to assist all other SSA beneficiaries in their pursuit of employment. The PABSS programs have a wide-ranging mandate. They are required to: (1) investigate complaints related to improper or inadequate services provided to beneficiaries, (2) provide information and referral services to beneficiaries, including information on work incentives, (3) provide consultation and legal advocacy on behalf of beneficiaries, (4) assist and represent beneficiaries in disputes with SSA, (4) provide information and technical assistance to government agencies, and (5) advocate to identify and correct deficiencies in entities providing employment services and supports to beneficiaries.

PABSS programs were initially not allowed to represent beneficiaries in overpayment and program issue cases with SSA. However, in June 2003 SSA modified the terms and conditions of the PABSS grants to allow them to represent beneficiaries in disputes with SSA. PABSS programs are allowed to accompany beneficiaries to SSA offices and assist beneficiaries to appeal continuing disability review determinations based on substantial gainful activity, as well as pursue a waiver or a reconsideration of an overpayment resulting from excess earnings.

Despite this change, however, some concern has been expressed that the PABSS projects lack the capacity to fully meet the needs of all beneficiaries attempting to access their services. The PABSS program is a small program in relation to the overwhelming number of individuals who may benefit from representation in overpayment or other work related cases. The role of PABSS programs in systems advocacy remains limited. PABSS services are only available to beneficiaries in cash benefit status. These concerns are discussed in detail in the next section.

In combination, the components of TTW are designed to enable beneficiaries who are interested in entering or reentering the workforce to (1) pursue their employment goals without jeopardizing their ability to provide for their basic needs, (2) maintain health care coverage throughout their period of employment, and (3) access the employment services and supports they need to acquire and maintain employment.

Section II: Overview of the Protection and Advocacy Programs

The PABSS programs are one of a number of programs operated by State Protection and Advocacy systems providing advocacy services to various populations. In several of these programs, the P&A is authorized to represent an individual in legal or administrative proceeding. A number of beneficiaries and advocates have felt that the PABSS program could more effectively serve beneficiaries if it was allowed to perform this function. This section examines the current authorities and historical roles of P&As.

The primary responsibility of the P&As is to protect and advocate for persons with disabilities. To accomplish this mission, Congress has given P&As unique authorities and responsibilities, described by Gross (2001):

- **General Legal Mandate.** P&As may initiate investigations of incidents of abuse, neglect or violations of the rights of persons with disabilities. It is notable that this legal authority extends to investigations and other issues involving the P&A's parent agency as well as third parties. For example, in 2002 a number of CAPs represented vocational rehabilitation clients in disputes with their state vocational agencies regarding eligibility decisions, delays or denials of services and devices, negating choice in the development of career goals, and improper case closures (National Association of Protection and Advocacy Systems [NAPAS], 2002a).
- **"Access" Authority.** P&As have broad access to the records of individuals with disabilities and to facilities in which they reside.
- **"Standing."** P&As have legal standing to bring lawsuits in their own right, that is, to act as the named plaintiff.
- **Accountability Mechanisms.** P&A governing boards must consist of persons who broadly represent and are knowledgeable about the needs of individuals seeking P&A assistance, including individuals with disabilities themselves.

- **Priorities.** Each state must develop annual P&A priorities with input from the public, insuring outcomes that meet the unique needs of individuals with disabilities living in the state.

According to the NAPAS 2002 Annual Report, P&As initiated a total of 61,280 intervention strategies during the 2002 calendar year. These are summarized in Table 2.

Type of Intervention	Number	Percent
Information and referral	19,515	32%
Technical assistance	13,540	22%
Negotiations/informal resolutions	13,835	23%
Administrative/informal review	5,179	8%
Investigations	4,686	8%
Legal remedies	3,378	5%
Other	1,147	2%

Protection and Advocacy Legislative Authority

Appendix A details the history, authority, and eligibility criteria for seven distinct advocacy programs operated through State P&A agencies. The programs include:

- Protection and Advocacy for Persons with Developmental Disabilities (PADD)
- Client Assistance Program (CAP)
- Protection and Advocacy for Individuals with Mental Illness (PAIMI)
- Protection and Advocacy for Individual Rights (PAIR)
- Protection and Advocacy for Assistive Technology (PAAT)
- Traumatic Brain Injury Protection and Advocacy System (TBI P&A)
- Protection and Advocacy for Beneficiaries of Social Security (PABSS)

The detailed descriptions of the seven programs illustrate the commonalities and subtle differences across the Federally funded advocacy system. In terms of legislative authority, most of the programs are modeled after the PADD program, originally authorized in 1975 as a major component of the Developmental Disabilities Assistance and Bill of Rights Act. With recent changes to the PABSS program, all the advocacy programs are now able to pursue legal, administrative, and other remedies to protect the rights of individuals with disabilities. They are allowed to formally represent individuals in administrative or legal matters, conduct investigations, and provide education to government agencies and the general public

PABSS Program Awards

The PABSS program is a relatively small protection and advocacy program designed to complement and supplement existing programs rather than to create a large new program

structure. In fiscal year 2003, the majority of states received \$100,000 to operate the PABSS program. The Native American P&A received \$50,000, as did American Samoa, Guam, and the Mariana Islands. Only 15 states received more than \$100,000, with four states (California, Florida, New York and Texas) receiving more than a \$200,000 allocation. In most states, funding is sufficient for the creation of a single position. In practice, most states have used these funds to partially support a number of positions, in order to maximize the number of staff members able to serve beneficiaries under the program. The fiscal year 2003 grant award for each state and territory is provided in Table 3.

The program provides P&A services to all eligible SSA beneficiaries and makes available dispute resolution services under TTW. However, a significant number of beneficiaries may be eligible for one or more of the other P&A programs described above and in Appendix A. Therefore, although the funding levels for PABSS programs limit their ability to meet the individual needs of tens of thousands of beneficiaries, other beneficiaries may be served in the PADD, PAIMI, or TBI P&A programs.

State	Recipient	Amount
AK	Disability Law Center of Alaska	\$100,000
AL	The University of Alabama	\$101,670
AR	Disability Rights Center	\$100,000
AS	American Samoa Protection & Advocacy	\$50,000
AZ	Arizona Center for Disability Law	\$100,000
CA	Protection and Advocacy, Inc.	\$438,275
CO	Center for Legal Advocacy d/b/a	\$100,000
CT	Office of Protection and Advocacy for Persons with Disabilities.	\$100,000
DC	University Legal Services	\$100,000
DE	Community Legal Aid Society, Inc.	\$100,000
FL	Advocacy Center for Person with Disabilities, Inc.	\$237,822
GA	Georgia Advocacy Office	\$131,540
Guam	Guam Legal Services Corporation	\$50,000
HI	Hawaii Disability Rights Center	\$100,000
IA	Iowa Protection and Advocacy	\$100,000
ID	Comprehensive Advocacy, Inc.	\$100,000
IL	Equipment for Equality, Inc.	\$173,703
IN	Indiana P&A Services	\$100,000
KS	Kansas Advocacy & Protective Services, Inc.	\$100,000
KY	Department of Public Advocacy P&A Division	\$115,855
LA	Advocacy Center	\$100,000
MA	Disability Law Center, Inc.	\$108,469

MD	Maryland Disability Law Center	\$100,000
ME	Disability Rights Center of Maine	\$100,000
MI	Michigan Protection and Advocacy Service, Inc.	\$163,902
MN	Legal Aid Society of Minneapolis	\$100,000
MO	Missouri Protection & Advocacy Services	\$100,000
MP	Northern Mariana P& A Systems, Inc.	\$50,000
MS	Mississippi Protection & Advocacy System, Inc.	\$100,000
MT	Montana Advocacy Program	\$100,000
Native Amer	DNA-People's Legal Services, Inc	\$50,000
NC	Governor's Advocacy Council for Person with Disab.	\$144,584
ND	Protection and Advocacy Project	\$100,000
NE	Nebraska Advocacy Services, Inc.	\$100,000
NH	Disabilities Rights Center, Inc.	\$100,000
NJ	New Jersey Protection & Advocacy, Inc.	\$102,642
NM	Protection & Advocacy System	\$100,000
NV	Nevada Disability Advocacy Center and Law Center	\$100,000
NY	NY State Comm on Quality of Care... Mentally Disab	\$326,822
OH	Ohio Legal Rights Service	\$187,784
OK	Oklahoma Disability Law Center, Inc.	\$100,000
OR	Oregon Advocacy Center	\$100,000
PA	Pennsylvania Protection & Advocacy, Inc.	\$193,993
PR	Office of the Ombudsman for Persons with Disabilities	\$100,000
RI	Rhode Island Disability Law Center, Inc.	\$100,000
SC	Protection & Advocacy for People with Disabilities, Inc.	\$100,000
SD	South Dakota Advocacy Service	\$100,000
TN	Tennessee Protection and Advocacy, Inc.	\$120,433
TX	Advocacy, Inc.	\$227,122
UT	Disability Law Center	\$100,000
VA	Virginia Office for Protection and Advocacy	\$100,384
VI	Virgin Islands Advocacy, Inc.	\$50,000
VT	Vermont Protection & Advocacy	\$100,000
WA	Washington Protection & Advocacy System	\$100,000
WI	Wisconsin Coalition for Advocacy	\$100,000
WV	West Virginia Advocates, Inc.	\$100,000
WY	Protection & Advocacy System, Inc	\$100,000

Source: SSA Office of Employment Support Programs, June 2003.

PABSS Program Responsibilities -- The PABSS program is generally responsible for providing advice to beneficiaries that will assist them in accessing employment services and supports, as well as advocate on behalf of beneficiaries who may be in disputes with SSA, the PM, VR, or an EN on an issue related to, or resulting from, the beneficiary's employment. Services can only be provided to eligible SSA beneficiaries. Services must be made available to all eligible individuals in a state. Individuals not entitled to a Title II cash benefit, or eligible for a Title XVI benefit, are not eligible for services.

Types of Services – Given the modest size of the grant awards under the PABSS program, P&As are required to provide a wide range of services to eligible beneficiaries, including advocacy, dispute resolution, investigation, negotiation, and mediation services. The services identified below are taken from the revised terms and conditions document disseminated to states in June 2003. The complete terms and conditions under which PABSS grantees operate are found in Appendix B. Examples of the types of services provided by P&As under the PABSS program are identified in Table 4 and described below.

Table 4	
Permissible PABSS Activities	
1.	Helping a beneficiary pursue the waiver or reconsideration of an overpayment due to excess earnings – up to and including any fact-finding hearing at SSA's Office of Hearings and Appeals;
2.	Accompanying beneficiaries to local SSA field offices;
3.	Explaining the appeal process to beneficiaries and assisting in filling out necessary paperwork;
4.	Pursuing appeals of continuing disability review determinations based on substantial gainful activity;
5.	Giving advice to assure complete consideration of potential subsidies, impairment related work expenses and plans for achieving self support; and
6.	Referring beneficiaries to other entities for support.

- ***“Investigate and review any complaint of improper or inadequate services provided to a beneficiary with a disability by a service provider, employer or other entity, except SSA, involved in the beneficiary's return to work effort.”*** The potential for abuse of SSA beneficiaries under the TTW program is very real. The sections below describe a number of situations in which the actions of a VR agency, EN, BPAO or other entity may deny beneficiaries the opportunity to make informed choices and direct their own careers. PABSS programs are allowed to investigate any complaint related to inappropriate or insufficient services brought to their attention by a specific beneficiary. PABSS programs are not allowed to litigate against SSA on behalf of an individual.
- ***“Provide information and referral to Social Security beneficiaries with disabilities about work incentives and employment, including information on the types of services***

and assistance that may be available to assist them in securing or regaining gainful employment, particularly services and assistance available through employment networks under the Ticket to Work and Self-Sufficiency Program. Provide information and technical assistance on work incentives to beneficiaries with disabilities.” This provision allows PABSS programs to provide information and referral services to beneficiaries, as well as provide technical assistance regarding specific work incentives. This is a very appropriate and valuable function. However, PABSS programs are generally not staffed to provide intense benefits planning and assistance services to large numbers of beneficiaries. In many instances, PABSS programs collaborate with BPAOs, CILs, or other programs to provide this function.

- ***“Provide consultation to and legal representation on behalf of beneficiaries with disabilities when such services become necessary to protect the rights of such beneficiaries. To the extent possible, alternative dispute resolution procedures should be used.”*** PABSS programs are required to exhaust all administrative remedies prior to initiating any legal action in State or Federal court. However, when all administrative remedies have been pursued, the PABSS programs have considerable authority to pursue appropriate legal remedies.
- 4. ***“Provide information and technical assistance on work incentives to governmental agencies, employment networks and other service providers, and advocacy organizations.”*** PABSS programs are also responsible for aggressive outreach activities within their states and local communities. The focus of these outreach activities is on ways in which SSA work incentives can impact agency employment practices, policies, and regulations. While this is an extremely valuable function, and some PABSS programs devote considerable time and effort to this activity, the limited resources available to PABSS programs make it difficult for the P&As to conduct major outreach initiatives.
- 5. ***“Assist beneficiaries with disabilities in disputes before SSA involving work-related program decisions and benefits overpayments that are clearly a barrier to obtaining employment.”*** This new authority represents a significant departure from the initial conditions under which PABSS programs operated. The revised terms and conditions document provides a number of examples of activities that are now allowable functions of PABSS programs.

Beneficiaries Served by the PABSS Program – Table 5 provides information on the number of beneficiaries served by the PABSS programs in fiscal year 2002. The data were collected during a period in which programs were engaged in start-up activities and the data collection system was evolving. As such, these data should be viewed as a preliminary benchmark; subsequent annual reports will provide a more accurate picture of program activities.

Table 5
Beneficiaries Served by PABSS Program: Fiscal Year 2002

State	Total # of Individuals Served	Total # of Cases Closed	# of Cases Resolved In Client's Favor	Individuals Receiving I&R	# of Outreach Presentations	Total # of Individuals Reached
Alabama	3	1	1	202	80	2790
Alaska	36	34	26	341	15	341
American Samoa	121	112	104	350	4	350
Arizona	66	44	36	16	28	867
Arkansas	7	7	4	117	97	2554
California	121	120	85	2	88	1280
Colorado	29	5	1	103	24	593
Connecticut	26	13	7	195	20	429
District of Columbia	5	5	5	5	24	0
Delaware	6	6	6	15	14	349
Florida	28	10	8	221	24	770
Georgia	7	5	4	351	45	4000
Guam	3	3	1	1	9	300
Hawaii	20	17	13	46	130	1822
Idaho	9	9	6	32	9	199
Illinois	277	255	220	7	70	553605
Indiana	16	6	3	105	35	2600
Iowa	84	3	1	79	8	615
Kansas	14	14	11	14	12	441
Kentucky	6	0	0	6	41	1447
Louisiana	55	34	22	9	15	1617
Massachusetts	6	2	2	511	18	590
Maryland	17	6	4	40	1	50
Maine	37	19	11	9	14	785
Michigan	11	9	7	30	45	4436
Mississippi	9	5	3	36	5	515
Missouri	9	9	4	30	5	1336
Minnesota	75	10	8	75	9	100
Montana	11	11	5	95	65	2000
North Dakota	7	3	2	55	17	645
Native American	4	0	0	4	4	26
North Carolina	13	13	3	135	22	0

Nebraska	16	3	1	9	4	257
Nevada	24	18	9	18	46	2241
New Jersey	17	6	5	70	26	2160
New Mexico	42	31	17	222	17	547
New York	59	23	9	255	28	824
New Hampshire	70	42	37	55	17	425
Northern Mariana	7	6	5	75	13	10000
Ohio	83	57	28	7	2	50
Oklahoma	35	29	29	173	37	519
Oregon	41	13	11	51	33	450
Pennsylvania	63	61	59	99	43	730
Puerto Rico	73	73	73	450	73	870
Rhode Island	19	11	2	16	6	140
S Dakota	24	19	14	56	44	5787
South Carolina	23	4	3	51	12	551
Tennessee	44	29	25	47	84	2054
Texas	81	49	37	3212	318	25141
Utah	8	2	2	15	64	945
Virginia	1	0	0	121	17	540
Virgin Islands	4	3	3	30	5	100
Vermont	9	4	3	115	13	351
Washington	9	4	4	26	36	1639
Wisconsin	103	5	2	85	24	905
West Virginia	6	2	2	6	47	161
Wyoming	1	1	0	12	38	409
Totals	2000	1285	993	8513	2044	645248
Averages	35	23	17	149	36	11320

Source: SSA Office of Employment Support Programs, June 2003

The data in Table 5 illustrate the extent to which the PABSS programs are attempting to provide a wide array of different services with relatively few resources. As such, states have been forced to prioritize their activities to meet the demand for services with available resources. On average PABSS programs provided individual advocacy to 35 individuals per state over the 12-month period. Information and referral services were provided to an average of 149 individuals per state during the year. Excluding Illinois, which accounted for a large percentage of all outreach activities, PABSS programs provided outreach services to an average of 1,636 individuals in fiscal year 2002.

Section III: Protecting the Rights of Beneficiaries in the Ticket to Work Program

The TTW program holds great promise for individuals who desire to increase their independence and economic self-sufficiency. As the program has evolved, many beneficiaries, advocates and services providers have identified implementation problems. These concerns take many forms. Some may represent the normal evolution of a new program, as individuals and organizations attempt to find their appropriate role and change traditional practices to meet the challenges of the new program. Others may represent isolated instances in which a small number of individuals or agencies have intentionally or inadvertently violated program rules. Still others may be widespread, systemic problems that are preventing the program from achieving the goals and outcomes envisioned by Congress and SSA.

**Table 1
Major Concerns in the Implementation of the TTW**

1. PABSS programs presently lack the capacity and resources to adequately represent beneficiaries in disputes with ENs, BPAOs, VR agencies, and SSA.
2. PABSS programs presently lack the authority to engage in systems advocacy activities
3. PABSS programs presently lack the authority to represent beneficiaries no longer in cash benefit status.
4. Beneficiaries may lack sufficient information about TTW the program.
5. Beneficiaries are not provided sufficient information about the impact of the program on their benefits and health care coverage.
6. Beneficiaries may be unable to locate an EN willing to accept their Ticket.
7. Beneficiaries may be unknowingly assigning their Ticket to state VR agencies, thereby giving up their right to assign their Ticket to any available EN.
8. Beneficiaries may be functionally unable to unassign their Ticket from an unproductive EN and reassign it to a new EN of their choice.
9. Beneficiaries may be denied the services and supports they need by ENs that view them as too difficult or too costly to serve.
10. Beneficiaries may receive inaccurate or incomplete information from BPAOs.
11. Beneficiaries may be victims of a conflict of interest in situations in which an entity serves more than one role in the TTW initiative.

The following section describes eleven major concerns that have been identified by beneficiaries, SSA, the Program Manager, ENs, State VR agencies, BPAOs, and PABSS programs. Each concern is analyzed from the perspective of beneficiaries and recommendations are provided for consideration by the Panel.

Concern #1 - PABSS programs presently lack the capacity and resources to adequately represent beneficiaries in disputes with ENs, BPAOs, VR agencies, and SSA.

As described previously, the SSA funded Protection and Advocacy for Beneficiaries of Social Security (PABSS) program is in its second year of operation. The PABSS programs assist beneficiaries with legal issues, employment issues, the IWP development process, disputes with ENs, and disputes with other agencies (other than SSA programmatic issues), and provide referrals and information about VR, employment services, and SSA's work incentives. Until very recently, the PABSS projects were not responsible for representing beneficiaries in administrative hearings dealing with disputes between beneficiaries and SSA.

The PABSS program is unique among the advocacy programs in terms of its authorizing legislation. PABSS programs are responsible for providing education, information and referral, and legal based advocacy services to SSA beneficiaries and recipients who wish to enter or re-enter employment. PABSS programs were initially not allowed to represent beneficiaries in SSA administrative procedures. In June 2003, SSA modified the terms and conditions of the PABSS grants to expand the program's role in representing beneficiaries in overpayments and other work related program issues.

The TTW legislation created the PABSS program to protect the rights of beneficiaries participating in the TTW program. PABSS programs are charged with providing a wide range of services that will enable beneficiaries to secure or regain gainful employment. Yet the PABSS programs are not funded at a level that will enable them to provide the in-depth services and supports required by the overwhelming number of beneficiaries who may require from their services each year.

The extent to which employment and increased earnings often leads to overpayments for both SSI recipients and SSDI beneficiaries has been thoroughly documented (Livermore, 2003). The likelihood that any effort to obtain or return to employment and increase earnings will result in erroneous payments creates a huge disincentive for beneficiaries. There is an urgent need to assist beneficiaries as they attempt to deal with SSA's complex administrative procedures. The P&A network, which possesses both the technical expertise on disability and employment issues, as well as the knowledge of SSA administrative and legal procedures, is uniquely positioned to assist beneficiaries with this important activity. Unfortunately, there are literally hundreds or thousands of individuals in overpayment status at any given time. The limited resources of PABSS programs do not allow P&As to meet the needs of even a small percentage of the individuals who can benefit from these services. In fact, now that the PABSS programs have this important authority, it is not clear how many programs will be able to dedicate significant resources to this activity.

Recommendation

The recent revision of the program to allow PABSS programs to represent beneficiaries in administrative procedures with SSA is a very positive step. The post-entitlement earnings reporting problem remains a major disincentive to employment for beneficiaries, who need a strong, independent advocacy function that supports them as they undertake the challenges associated with securing or returning to work. However, the sheer size of the current overpayment crisis, coupled with the relative lack of resources for the PABSS grantees, makes it highly unlikely that the program can address even a small percentage of the current beneficiary need for assistance. The PABSS program, and the ability of the P&As to provide representation to beneficiaries during SSA administrative procedures, should not be viewed as a meaningful part of the solution to the post-entitlement earnings dilemma. SSA's resources would be better spent attempting to prevent overpayment problems as opposed to relying on PABSS programs to assist beneficiaries after overpayment problems have occurred.

1. **Represent Beneficiaries in Disputes with SSA.** PABSS programs should be allowed to assist and represent beneficiaries in overpayment situations or other disputes with SSA. The revised terms and conditions for the program allow PABSS projects to provide this service to beneficiaries. However, the extent to which individual state P&As feel they have the capacity and expertise to perform this function is unclear. SSA should encourage PABSS to prioritize this activity and ensure that the projects have sufficient resources to undertake this role. SSA should reaffirm the important role of PABSS programs in the direct representation of beneficiaries in disputes with SSA. This is an important function and employment support that should be available to beneficiaries. PABSS programs are uniquely positioned with both the legal and programmatic expertise to provide support to beneficiaries who are attempting to maintain employment and economic self-sufficiency.
2. **Increase Resources Available to PABSS Programs.** PABSS programs should have sufficient resources to enable them to effectively serve all beneficiaries who request their support in addressing post-entitlement earnings problems. Funding should be sufficient to enable PABSS programs to represent beneficiaries in disagreements with SSA, the PM, ENs, State VR agencies, BPAO programs and other entities involved in implementation of the TTW Act. More broadly, resources should be available to enable PABSS programs to assist individuals in disputes regarding the complete array of SSA programs and work incentives, including Plans for Achieving Self-Support (PASS), Impairment Related Work Expenses (IRWE), wage reporting, 1619a and 1619b, CDR protections, expedited reinstatement (EXR), Medicaid buy-in programs, extended Medicare eligibility, and other related issues.

Concern #2 - PABSS programs presently lack the authority to engage in systems advocacy activities.

For the most part, PABSS programs must provide advice and advocacy to individual beneficiaries seeking or receiving services from ENs or other employment support organizations. Current interpretation of the legislation by SSA does not allow the PABSS programs to perform systems advocacy activities. P&As are not allowed to engage in "systems advocacy" activities

under the PABSS program, in sharp contrast to the authority they have in other P&A programs. Despite this prohibition, PABSS programs are allowed to “advocate to identify and correct deficiencies in entities providing vocational rehabilitation services, employment services and other supports to beneficiaries with disabilities. . .” While this advocacy can be performed on behalf of a single beneficiary, in practice it may be similar to a systems advocacy function in situations where a PABSS program is meeting with a State VR agency to address specific concerns or reporting to the Program Manager on matters related to the TTW program.

The prohibition on systems advocacy activities on the part of the PABSS projects is similar to the restriction placed on Client Assistance Programs (CAP). The CAP programs do not have legislative authority to engage in education of policymakers or other systems advocacy activities. However, it is important to note the CAP programs are expressly prohibited in their authorizing legislation from performing this function. In the case of the PABSS program, no similar legislative prohibition exists.

Recommendation

1. **Engage in Systems Advocacy Activities.** PABSS programs should be allowed to engage in systems advocacy in situations in which this activity will promote beneficiaries participation in the TTW program. SSA should allow PABSS programs to engage in systems advocacy activities in direct support of beneficiaries’ participation in the TTW program. PABSS programs may be able to play a significant role in insuring that the actions of state and local entities are consistent with SSA’s goals for the TTW program. Given the level of resources available in the TTW program, however, systems advocacy activities should only be performed in situations where the activities won’t impair the ability of a PABSS program to meet the needs of all individual beneficiaries seeking its support. Systems advocacy activities should be concentrated on state and local issues and entities, as opposed to focusing exclusively on federal issues.

Concern #3 - PABSS programs presently lack the authority to represent beneficiaries no longer in cash benefit status.

Like other components of the TTW initiative, the PABSS program is in its early stages. Functions and operating procedures are being continually reviewed and revised by SSA, the National Association of Protection and Advocacy Services (NAPAS), and the individual PABSS programs. At the same time, the PABSS programs are gaining experience in working with State VR agencies, ENs, and BPAOs on TTW related advocacy issues. In addition, many individuals contacting state P&A agencies may actually be eligible for services under several of the different advocacy programs operated by the agency. PABSS programs have used a variety of different approaches to determine when an individual is eligible for and should be served under the PABSS program, as opposed to, or in addition to, various other programs for which the individual may be eligible.

Under the PABSS program, disabled individuals are beneficiaries who are “entitled to Title II benefits based on disability or an individual who is eligible for (i.e., receiving) Federal Supplemental Security Income cash benefits under title XVI based on disability or blindness.”

This has been interpreted to mean that Ticket participants who have achieved substantial earnings outcomes so that they no longer receive a cash benefit, or individuals in 1619b status, for example, would not be eligible for program services.

Recommendation

Information on the activities of the PABSS programs is just beginning to emerge. PABSS programs are engaging in individual advocacy, information dissemination, outreach, and legal advocacy activities. In many instances, these activities are closely integrated with other P&A programs. Therefore, it is extremely difficult to determine whether individuals not currently in cash benefit status may be able to access protection and advocacy services through other P&A programs. However, it is imperative that beneficiaries who have assigned their Ticket to EN and have entered employment, thereby eliminating their cash benefit, as well as working individuals in 1619b status, have access to protection and advocacy services through the PABSS program.

- 1. Provide services to individuals not in cash benefit status.** PABSS programs should be allowed to provide services to otherwise eligible individuals who are not currently in cash benefit status. Current program rules do not allow beneficiaries who are not in cash benefit status, such as persons in the Extended Period of Eligibility (EPE) or 1619b, to be served by PABSS projects. Legislative and regulatory changes should be made immediately to allow these individuals to be served. Individuals in EPE or 1619b are by definition likely to be employed and earning significant wages. As such, they are likely to have regular contact with an EN, VR agency, or other employment support organizations. They are also more likely than other beneficiaries to need support in post-entitlement earnings disputes with SSA. Therefore, it is imperative that the services provided by the PABSS projects should be available to these individuals.

Concern #4 - Beneficiaries may lack sufficient information about the TTW program, as well as all other aspects of the TTW legislation. If beneficiaries are unable to access complete and accurate information about the program, they will be unable to make informed choices about whether or not to assign their Tickets and select an appropriate service provider.

SSA has implemented a multi-faceted approach to informing beneficiaries about the TTW program. Written material is provided to beneficiaries in the initial Ticket mailing. The Program Manager has established a call center that provides basic information to thousands of beneficiaries each week during Ticket rollout periods. SSA has also launched the national BPAO and PABSS initiatives to provide another source of support to beneficiaries attempting to understand components of the program and decide whether or not to pursue employment. This multi-faceted approach has been implemented quickly and with some success. However, key stakeholders agree that lack of information on the part of beneficiaries remains a significant problem.

To realize the goal of informed choice, beneficiaries must have access to complete and accurate information on all aspects of the Ticket to Work program and an understanding of the options available to them. While in theory a simple, straightforward concept, in practice the TTW

program is quite complex. Beneficiaries must be aware of procedures for assigning and unassigning Tickets, procedures for developing Individual Work Plans (IWPs), requirements for “timely progress” in order to continue to defer Continuing Disability Reviews (CDRs) and other program features. Anecdotal information from BPAOs, PABSSs, and ENs indicated that many beneficiaries are experiencing great difficulty in understanding basic aspects of the program.

While the Program Manager, State VR agencies, ENs, BPAOs and PABSS programs are all devoting considerable time and resources informing beneficiaries about the program, conducting effective outreach and information dissemination efforts across multiple agencies remains a difficult challenge. The following represent several common questions or concerns:

Many beneficiaries who receive the basic packet of information provided with their Ticket still have a difficult time understanding the purpose of the program. A lack of awareness about the voluntary nature of the program leads many beneficiaries to feel obligated to enter the workforce and confused or frightened about the supports available to them if they choose to pursue employment. In addition, many beneficiaries are unclear on where to go to get the basic information they need. One BPAO in a southwestern state indicated “individuals have to call many numbers in order to get the information they need: first Maximus, then the toll free statewide number, and finally the BPAO project before they are successful in getting the numbers for the employment networks. Often, before the EN or State VR agency will talk to them about the Ticket program they are referred back to the BPAO for benefits information. It can be a frustrating game of phone tag and what number do I call for beneficiaries who receive tickets.”

Confusion also exists regarding services that are available to beneficiaries. Based on the written information provided, many individuals erroneously believe that they will receive any or all of the listed services, including job training and transportation. However, as pointed out by the PABSS project in Arizona, “the variety of services offered by the Employment Networks often do not fit the needs of beneficiaries ready to return to work. For example, many don’t provide any type of training or education. However, if a beneficiary is looking only for short-term job development services, they may be able to find an Employment Network to take their ticket.” State VR agencies and ENs frequently indicate that large numbers of beneficiaries contact them for services based on an inaccurate understanding of the TTW program. Anecdotal reports from ENs suggest that many beneficiaries initially believed that (1) they could exchange their Ticket for an immediate job or cash, (2) they must participate in the program even though they did not wish to work, (3) they would lose their benefits if they did not assign their Tickets, (4) ENs are obligated to accept an individual’s Ticket, or (5) ENs are obligated to provide Ticket holders funding for vocational training.

CDR protections in the Ticket to Work program are tied directly to beneficiaries having a ticket “in use”. Many beneficiaries believe that an assigned ticket meets the “in use” requirement and may be unknowingly at risk for the initiation of medical reviews. In addition, large numbers of beneficiaries are finding that many ENs are unable to explain the technical provisions and requirements of the program to beneficiaries. For instance, an individual involved in the roll out of the Ticket program in South Carolina reports that “Some private ENs are not aware of the proper procedures to handle a beneficiary’s concerns. At least one beneficiary in South Carolina

was told that if they attempted to reassign their ticket to another EN they would have their Social Security benefits terminated. The individual was quite upset – stating that they wished they had never used their ticket because now they were trapped.”

Recommendations

Explaining a complicated program such as the TTW is a challenging task. SSA should continue its ongoing efforts to monitor and evaluate its information dissemination activities and make changes to address the serious misconceptions that are consistently reported across beneficiaries, such as the voluntary nature of the program, that the Ticket does not entitle the person to an immediate job, that ENs cannot deny services to a Ticket holder, and that TTW will assist beneficiaries who want to increase their earning but keep their benefits. Specific recommendations include:

1. **Modify Information Materials.** The current materials being used to inform beneficiaries about the program should be reviewed and revised to ensure the program specifics are being accurately explained and represented. Supplemental materials should be developed as necessary to explain the more difficult to grasp concepts.
2. **Clarify Roles.** Beneficiaries should not be forced to contact the Program Manager, State VR agency, an EN and a BPAO in order to obtain basic information about the program. The Program Manager should retain responsibility for providing basic information, but for many beneficiaries a single phone call may not be sufficient to enable them to understand many of the details of the program. The BPAO network should assume increased responsibility for this effort. However, the BPAO program capacity is limited, and resources should be carefully allocated to insure that services are provided to the greatest number of individuals possible. State VR agencies and ENs should not spend significant time and resources to provide basic information about the program to beneficiaries, since they are not compensated for this function and staff members in the programs receive far less training on TTW than the Program Manager and the BPAOs.
3. **Collaborative Outreach Activities.** SSA should initiate additional outreach activities that will increase general knowledge of TTW among beneficiaries and organizations that currently serve beneficiaries. Entities such as SSA Field Offices (FOs), CILs, psychosocial rehabilitation or mental health centers, BPAO programs, community rehabilitation programs, advocacy organizations, SSA FOs, and One-Stop Career Centers could all play a key role in providing accurate information to beneficiaries and encouraging them to consider participation in the program.

Concern #5 - Beneficiaries may lack complete and accurate information on the impact of employment or increased earnings on their benefit status and/or health care coverage. Inaccurate information may have a detrimental impact on consumers' economic independence.

In addition to basic information about the TTW program, beneficiaries must have access to comprehensive benefits planning and assistance services that will support their involvement in

the program and address the resulting benefit and work incentive impacts. Participation in the TTW program will have a significant impact on an individual's benefits status and health care coverage. If beneficiaries are not certain what this impact will be, they may be more likely to jeopardize their current benefit and health care status by attempting to assign their Ticket. If they receive and act upon incomplete or erroneous information, their participation could endanger the benefits and health care coverage they need for their personal safety.

Many ENs are "non-traditional" service providers who may be working with Social Security beneficiaries for the first time and encountering the complex array of rules and procedures with little knowledge or support. In many instances, despite the presence of staff members who are inadequately trained and equipped, ENs have opted to directly address questions of beneficiaries contacting them after receiving their ticket. For many beneficiaries this has meant a perpetuation of confusing and often time inaccurate information.

TTW added new health care provisions, work incentives, and benefit protections for beneficiaries with disabilities. While these provisions are extremely valuable, they have added new complexities and rules to be understood by beneficiaries. Individuals receiving tickets are often confused about the interface between the Ticket and their benefits. Some beneficiaries believe that they have been specifically selected to work and will lose their cash benefits and health care if they don't assign their ticket. Others believe quite the opposite – that they will retain all benefits simply by assigning their ticket. Unfortunately, these misconceptions are frequently perpetuated by employment networks, State VR agencies and others involved in the roll out of the ticket program that lack the resources and trained staff to meet the needs of beneficiaries. Examples of the complex decisions faced by beneficiaries deciding whether or not to assign their Ticket are illustrated below.

Continuing Disability Reviews - Under TTW, the Social Security Administration will not initiate a medical continuing disability review (CDR) during any period in which a beneficiary is using a ticket. SSA defines "using a ticket" as a specified period of time during which the beneficiary is actively following his/her plan to become self-supporting. This period begins for beneficiaries on the date they assign their ticket to an EN or State VR agency. The decision that a beneficiary continues to make timely progress and, therefore, continues to have a ticket "in use" is made by the Program Manager during the initial 24 month and subsequent 12-month reviews. It is a critical determination for beneficiaries in terms of its implications for continued access to the medical CDR protections.

In addition to beneficiaries with an assigned, "in use" Ticket, the medical CDR protections also extend to individuals with tickets who are in an extension period. The extension period is the 3-month period that begins when a ticket that is "in use" becomes unassigned for any reason, either by the beneficiary or by the Employment Network/State VR agency. During this extension period the ticket is still considered to be in use, and a CDR will not be initiated. If, however, the beneficiary concludes the 3-month period without having reassigned his/her ticket, then that ticket is considered not in use and a medical CDR may be initiated.

While beneficiaries who are using their ticket or are in an extension period are protected, the following table from the SSA POMS (DI 55025.001) illustrates that there are in fact a number of ticket statuses that still allow for medical CDRs to be initiated:

Ticket Status	Initiate Medical CDR?
Eligible	Yes
Mailed	Yes
Assigned In Use	No
Assigned Not, In Use; Inactive	Yes
Not Assigned, In Use; Extended	No
Not Assigned, Not in Use	Yes
Terminated	Yes

In spite of the multiple situations or statuses that still allow for medical CDRs, BPAO projects have reported that many beneficiaries they are in contact with believe themselves to be protected based on the fact that their Ticket has been assigned. Although the Ticket assignment notice sent to beneficiaries states that they should contact the Program Manager regarding the rules for “using a ticket”, beneficiaries are either unsure of where to go for answers or unable to get satisfactory answers to their questions about CDR protections.

Use of Available Work Incentives - In addition to understanding the impact of work and earnings on SSDI and SSI cash benefits, there are numerous other benefit related factors that may affect Ticket holders. One important issue is that of the Social Security work incentives. Participation in the Ticket to Work program does not limit use of the available work incentives by beneficiaries in any way. Ticket holders may use all work incentives available to them in conjunction with their ticket. For example, an SSI recipient may choose to use a Plan for Achieving Self-Support (PASS) to cover the costs for a specific skill training program needed to achieve their career goal, while simultaneously depositing their ticket with an EN for job placement services.

In addition to assisting beneficiaries in achieving their employment goals, the use of work incentives also enables beneficiaries to retain cash benefits for a longer period of time while they work toward stability in employment. While the tremendous advantages are clear for beneficiaries, from the perspective of ENs the use of work incentives may make it less likely that outcome or milestone payment thresholds are generated. For example, many of the available work incentives, such as PASS and Impairment Related Work Expense (IRWE), increase the level of earnings needed to result in the loss of benefits and affect the timing of SSI and/or SSDI cash benefits termination. This holds significant implications for Employment Networks in terms of their ability to receive outcome payments. At one level, ENs may be working against their own economic self-interest if they inform beneficiaries and encourage the use of these available work incentives.

Program Eligibility - Given the relative newness of the TTTW program, additional concerns related to the interface between using a Ticket and the benefit program rules are likely to surface over time. One recent example of this was brought to light by an EN who identified a potential issue pertaining to accepting a ticket and providing services to a beneficiary who is newly entitled to disability benefits. Under certain circumstances, if a new beneficiary who has not satisfied the 12-month duration eligibility requirement is assisted in returning to work at a substantial level, eligibility for benefits, and consequently a Ticket, may be terminated. The potential ramifications for both the beneficiary and the EN in this type of situation are significant.

The ability of beneficiaries to make informed choices about entering employment, maintaining health care coverage, and obtaining necessary services requires that they have a clear understanding of the impact that work and earnings will have on their benefits. TTW recognizes that arming individuals with information about their possible employment and benefit paths and potential outcomes will result in a greater number of beneficiaries who are willing to consider and chose work as their best option.

Recommendations

To protect the interests of beneficiaries, it is critical that information provided to an individual about his or her benefits be delivered in an unbiased manner that facilitates the person's right to make an informed choice. A conflict of interest clearly exists when a beneficiary is assisted by an individual or agency that has a financial and/or other interest at stake in the final outcome of the beneficiary's work and benefits decision. Given the difficulty that such a conflict poses in providing judgment-free information and guidance to the beneficiary, such situations must be avoided, or at an absolute minimum, clearly disclosed to the beneficiary at the outset, along with information on other alternatives for securing benefits assistance.

To truly support informed choice, the information provided must be complete, accurate, and individualized to the beneficiary's unique situation and needs. While many of the beneficiary's questions will be basic and straightforward, the answers are often complex given the myriad of rules and regulations governing the benefit programs and work incentives. Misinformation can have a disastrous effect on a person's ability to pay for housing, food, medical expenses, and other essential needs, and, for many, will lessen their resolve to pursue employment. Therefore, it is absolutely essential that individuals or agencies providing assistance with benefits maintain a high level of skill and knowledge. Staff must be well trained and have access to resources for on-going technical support and update of skills and information.

Finally, benefits assistance services must be delivered early in the process to ensure that beneficiaries considering assignment of their ticket are able to take into account all factors and implications and make an informed choice. To the extent that it is feasible, BPAO staff should participate in orientation sessions conducted by ENs and State VR agencies to make certain that beneficiaries who attempt to assign their Ticket are fully aware of the effects of Ticket assignment on their benefits and health care status.

1. **Provide Early Access to Benefits Planning and Assistance Services** - SSA should work with the Ticket Program Manager, State Vocational Rehabilitation agencies, and Employment Networks to insure that benefits planning and assistance supports are available to beneficiaries early in the Ticket to Work process. When a beneficiary contacts the Ticket Program Manager, he or she should continue to receive information about the availability of BPAO services in the local area, as well as the type of services provided by BPAOs. Clear policies should be developed regarding the extent to which Program Manager staff members should provide work incentive information to beneficiaries. Similarly, State VR agencies should provide information about BPAOs to the hundreds of beneficiaries who contact them during the initial stages of ticket rollout. Technical assistance should be provided to local ENs so that they understand the importance of BPAO services and assist potential ticket holders to access the service.
2. **Provide Early Access to Benefits Planning and Assistance Services** – Beneficiaries should receive information about the protection and advocacy services available through the state PABSS program throughout their employment experiences. All mailings from SSA and the PM should contain clear information that makes beneficiaries aware of the PABSS program, describes the types of services provided, and provides contact information for PABSS services. While it is crucial that beneficiaries receive this information at the time they receive their Ticket, information should be provided throughout the course of individuals' employment experiences. ENs should inform Ticket holders of this service at the time of IWP development. BPAOs should inform beneficiaries of this service at the time that they provide information regarding wage reporting, CDR protections, IRWEs, expedited reinstatement, and many other work incentives. PABSS programs should be actively involved in any outreach activities conducted by ENs, VR agencies, BPAOs, or other members of the TTW network.
3. **Increase the Capacity of the National BPAO Program** - SSA should assess the capacity of the national BPAO network and insure that a sufficient number of benefits specialists are available to meet existing demand for the service and adequately serve beneficiaries attempting to participate in the Ticket to Work program. Initial data from the national VCU BPAO database indicate that the number of beneficiaries served by a BPAO program increased by 50% when the Ticket was launched in a state. In some Round 1 Ticket states, local BPAO programs reported difficulties in responding to the overwhelming demand for services. In some instances, BPAOs have been forced to make beneficiaries wait up to two weeks for initial appointments. In other communities, BPAOs have sharply curtailed outreach activities to avoid creating a demand that they cannot meet.
4. **Encourage BPAO, EN, PABSS, VR Collaboration** - SSA should encourage BPAOs to collaborate with State VR agencies and ENs to conduct orientation sessions for beneficiaries. In a number of rollout states, ENs have conducted orientation sessions for beneficiaries who have indicated an interest in participating in the TTW program. These orientation sessions may include representatives of the State VR agency, a local BPAO, and the PABSS program. These sessions have allowed beneficiaries to understand the

services provided by each of these entities, and enabled them to understand the potential impact of Ticket assignment on their benefits in a timely manner.

Concern #6 - Beneficiaries may want to use their Ticket to obtain vocational services and obtain or return to employment, but be unable to locate an Employment Network (EN) willing to accept Ticket assignments.

The Ticket to Work and Self-Sufficiency program is intended to both increase the universe of available employment service providers as well as to enhance the opportunities of beneficiaries to exercise informed choice in selecting from their available options the provider or consortium of providers best suited to meet their needs. In light of this, the relatively limited number of organizations signed on to serve as employment networks under the Ticket to Work program has raised concern regarding the success of the program to date in achieving its goals.

At this point in time, the Ticket to Work program has been phased in a total of 33 states and the District of Columbia, with a combined total of 2,835,000 Tickets mailed to beneficiaries and recipients through January 21, 2003. While the Program Manager continues to recruit ENs on an ongoing basis, as of February 4, 2003, the SSA Office of Acquisition and Grants (OAG) had approved 688 EN applications and 173 ENs had accepted Ticket assignments.

When considering the choices available to consumers, it's important to keep in mind that many of these Employment Networks have contracted to serve limited catchment areas. While a portion of the current ENs do offer services across state and regional lines, or even provide services nationally, many beneficiaries feel these agencies are substantially limited in their ability to respond to their service needs. National ENs may perform a valuable function within the overall Ticket program; however, their availability does not mean that all beneficiaries have access to an EN that offers the services required to meet their individual needs.

The disproportionate number of ticket assignments to State VR agencies over other Employment Networks to date has likewise raised questions for beneficiaries and advocates about the extent to which individuals are being afforded opportunities to exercise real choice. Many of these ticket assignments to State VR agencies are believed to be a result of "pipeline cases", or cases in which the beneficiary receiving the ticket in the mail was already a client of the VR agency. To be considered a pipeline case, the individual must have an IPE with a signature and date, and it must pre-date the release of Tickets on February 6, 2002. The extent to which the State VR agencies informed these individuals of their right to choose from the universe of available ENs, versus limiting the amount and type of information shared regarding choice and options, is not known at this time. However, anecdotal evidence from ENs, PABSS programs and BPAO programs indicates that at least some individuals feel obligated to assign their Ticket to the VR agency, unaware of the availability of other ENs that could potentially meet their needs.

The success of the program in increasing choices by recruiting new private providers to serve as ENs is believed by many to be compromised by insufficient incentives in the employment network payment system options. While in some instances private organizations may be able to access EN payments to supplement their existing funds for services to a particular beneficiary, this will clearly not always be the case. For many private agencies, reliance on a system that

allows only for payment when certain employment outcomes are met is viewed as too great a financial risk.

An additional factor influencing the service alternative available to consumers in the Ticket to Work program is the fact that the program is based on choice – choice not only for the consumer, but for employment networks as well. The regulations are clear that ENs may not discriminate in the provision of services based on a beneficiary's age, gender, race, color, creed, or national origin. An EN may, however, select the beneficiaries to whom they will offer services based on factors such as the EN's assessment of the needs of a beneficiary, their ability to help the person, the projected costs of services needed and their perceived likelihood of recovering costs.

The design of the EN payment system, under which SSA pays an EN for specific work related milestones or outcomes achieved by the beneficiary – and not for specific service costs – makes this ability to choose which Ticket holders to serve absolutely critical for private service providers. The expense of providing intensive up front services and risk of outcome payments must be carefully weighed by many of the private ENs who are often operating with limited budgets and capital to invest.

As stated above, however, a direct consequence of the EN's right to select individuals whose Tickets it will accept is the understanding that some beneficiaries are likely not to be selected for services by private ENs. Some beneficiaries apt to be considered less attractive to these organizations include:

- Beneficiaries with long, sporadic work histories;
- Those with needs for intensive, high cost services and supports;
- Beneficiaries who are seeking career exploration, job training, or education; and,
- Individuals unwilling to lose cash benefits.

Unlike private ENs, who are in fact encouraged to be selective by the design of the EN payment system, the State VR agencies serving as ENs continue to be mandated under Title 1 of the Rehabilitation Act to serve all eligible individuals. While required to serve all eligible individuals, including beneficiaries with more significant disabilities, the State VR agencies are clearly in a better financial position than most ENs to do so. In addition to their Title I funds, State VR agencies have access to enhanced payment system options under the TTW program. Specifically, State VR agencies acting as employment networks may choose on a case by case basis to serve a beneficiary under the employment network payment system it has elected (either the outcome ticket payment system or outcome milestone payment system), or to receive payment for services rendered to the individual under the traditional VR cost reimbursement payment system.

Recommendations

As a result of all of the factors outlined above, in a system established to expand the universe of choice for beneficiaries, some individuals will clearly find themselves with more limited options than others. Given the design of the program and lack of requirement for ENs to serve any particular beneficiary, there appears to be little recourse for beneficiaries whose tickets are not accepted by a private EN for reasons other than age, gender, race, color, creed, or national origin. However, SSA can engage in a number of actions that will enhance the likelihood that individual beneficiaries will have access to an EN that will attempt to facilitate their employment goals.

1. **Identify Active and Inactive ENs** - SSA should determine the number of ENs that are actually accepting Tickets and participating in the program. Nearly 700 EN applications have been approved, but fewer than 200 ENs have accepted Ticket assignments. This information is necessary in order for SSA to determine the actual number of ENs participating in the program and improve approaches to EN recruitment.
2. **Expand the Number of Active ENs** - SSA should continue to recruit and expand the number of ENs operating in all states. To increase the number of ENs providing services through the TTW program, SSA should consider addressing issues such as timely payments for ENs, less burdensome methods for earning verifications, and other concerns that have caused a number of ENs to view the TTW program as more difficult to administer and operate than they had initially envisioned.
3. **Encourage VR Agencies to Support EN Development** - SSA should encourage State VR agencies to promote the development of additional ENs in their states. If VR agencies would alter their agreements with ENs, to reduce the financial risk faced by ENs attempting to serve individuals with significant support needs, many more beneficiaries might have access to ENs willing to accept their Ticket assignment and address their employment needs.
4. **Identify Innovative EN Practices** - SSA should identify those ENs that have engaged in innovative practices that have allowed them to accept large numbers of Ticket assignments, particularly from individuals with significant support needs, analyze the potential for other ENs to replicate these approaches, and then provide technical assistance to ENs to enable them to incorporate these practices into their ongoing operating procedures.

Concern #7 - Beneficiaries who are new applicants to State Vocational Rehabilitation agencies may be unaware that by signing an Individualized Plan for Employment with the State VR agencies they are also assigning their Ticket to the agency, thereby giving up their right to assign their Ticket to any available EN.

SSA has provided guidance to State VR agencies regarding the procedures to use in accepting Tickets from beneficiaries and communicating with the Program Manager. On September 3, 2002, SSA distributed Transmittal No. 17 of SSA's VR Providers Handbook. The transmittal. Section 12.2 of the transmittal described TTW procedures pertaining the assignment of Tickets for new cases – individuals who were not receiving VR services at the time they received their Ticket.

A new case is defined as a beneficiary who first becomes eligible for a Ticket before the beneficiary and the state VR agency sign an IPE. With new cases, the beneficiary and VR representative signatures on an IPE indicate that:

- The beneficiary has decided to use the Ticket to obtain services from the state VR agency; and
- The state VR agency has found the beneficiary eligible for VR services.

In new cases, a completed SSA-1365 with the beneficiary's signature and date is generally accepted as sufficient proof that the beneficiary has agreed to assign the Ticket to the VR agency. However, if the beneficiary does not sign the SSA-1365, the unsigned form can be submitted along with the first and last page of the IPE signed by both the beneficiary and VR agency representative. The effective date of Ticket assignment is the first day that (1) the beneficiary is eligible to assign the Ticket and (2) the IPE is signed by the beneficiary and the state VR agency representative. In this situation, it is possible that the beneficiary's Ticket may be assigned to the VR agency without the beneficiary (1) being aware that the Ticket has been assigned, or (2) consenting to the Ticket assignment.

The SSA policy related to new VR cases has raised a number of concerns on the part of beneficiaries, PABSS programs, BPAO programs and the VR agencies themselves. The first concern relates to the issue of informed consent. While some VR programs may take great pains to insure that Ticket holders are fully aware of the implications of completing a IPE with a VR agency, others may be less diligent and not fully inform beneficiaries of the consequences of their actions. In this case, it would appear that this procedure is entirely inconsistent with the concept of informed choice. The beneficiary would have his or her Ticket assigned, and be accountable for the timely progress and other provisions of the Ticket program, without be fully informed of these actions.

A second concern relates specifically to the timely progress requirement of the Ticket program. Individuals seeking services from State VR agencies may often request restorative or educational services that may extend over a period of several years prior to the individual entering employment. For Ticket holders, once a Ticket is assigned to VR, the beneficiary will be subject to the timely progress requirements of the Ticket legislation. Beneficiaries may fail to meet these requirements, and be adversely impacted, even though they are progressing in accordance with their approved IPE. SSA has developed procedures that will transfer an individual's Ticket from active to inactive status. However, these procedures are not clear to VR agencies and should be further clarified.

A third concern relates to the Ticket holder's ability to assign a Ticket to a non-VR EN and subsequently obtain services from the State VR agency. Considerable confusion persists among beneficiaries, ENs, and VR agencies regarding the responsibilities of the VR agency when an individual has assigned his or her Ticket to an EN. Specifically, it is clear what the agency's responsibilities are when an individual refuses to assign his or her Ticket to VR, but what services from the agency. Transmittal 17 would appear to indicate that the State VR agency

could assign the individual's Ticket through the Program Manager even though the individual does not want that to occur. In addition, it is uncertain whether State VR agencies are permitted to refuse services to clients that have Tickets assigned to other ENs when no VR-EN agreement exists.

Recommendations

The issues related to the rights and responsibilities of beneficiaries and State VR agencies during Ticket assignment are serious and require careful consideration by SSA and the Rehabilitation Services Administration (RSA). The issues directly address the issues of informed choice and equitable treatment for all individuals applying for services from State VR agencies.

1. **Develop SSA/RSA Policies that Insure Consumer Choice** - SSA and RSA should develop a coordinated policy regarding the responsibilities of State VR agencies toward beneficiaries who wish to assign their Ticket to a non-VR EN and yet receive services from the State VR agency. This policy should protect the Ticket holder's right to assign their Ticket to the EN of their choice and be consistent with the requirements of the Americans with Disabilities Act (ADA).
2. **Reconsider Existing Policies Regarding VR Treatment of New Cases** SSA should reconsider the policies and operational guidance contained in Transmittal 17 to insure that these procedures protect a beneficiary's right to informed choice. Specifically, procedures should be revised if necessary that an individual will not have his or her Ticket assigned to a State VR agency without his or her knowledge and consent.

Concern #8 - Beneficiaries may assign their Ticket to a VR agency or an EN, and then be unable to "unassign" their Ticket and reassign it to a new EN, since potential new ENs will not be willing to share subsequent milestone or outcome payments with the agency that originally provided services.

A Ticket holder may choose to assign their ticket to any EN or State VR agency who agrees to accept their ticket and work with them in developing and implementing an Individual Work Plan (IWP). The ticket is considered assigned when such an agreement is reached and consented to on the Ticket Assignment form by both parties. For State VR agencies serving a Ticket holder, a written Individual Plan for Employment (IPE) must be developed and signed in accordance with all of the requirements of Title 1 of the Rehabilitation Act, as amended. The VR agency must then submit to the program manager a completed and signed Ticket Assignment form that includes information regarding the IPE before the beneficiary's ticket is considered to be assigned to the agency.

An exception to this rule, however, exists in SSA policy. Specifically, "in the rare instance when the beneficiary refuses to sign the Ticket Assignment form, the state VR agency may submit a copy of the relevant pages of the signed IPE to the Program Manager in place of the assignment form." (SSA POMS DI 55020.001)

As stated previously, State VR agencies are allowed in some cases to view a signed IPE by a Ticket holder as a de facto assignment of their ticket to the agency and are submitting the unsigned Ticket Assignment form to the program manager. It is not clear the extent to which State VR agencies are informing beneficiaries of the consequences of signing an IPE on their Ticket eligibility, timely progress requirements, and other components of the TTW program. Without this information, it would seem that this procedure would infringe on the opportunity for informed choice and consent on the part of the beneficiary. This assignment of a Ticket to a State VR agency without the noted informed consent of the individual, not only violates the rights of the individual, but also may lead to additional difficulties on the part of the beneficiary in his or her future efforts to exercise choice among providers and services.

While beneficiaries in this position may have some recourse once they are aware of the situation, their ability to unassign their ticket with VR, and then successfully reassign their ticket to a different EN of choice, will be influenced by two important factors:

- First, how much progress they have made in their rehabilitation program with the State VR agency; and,
- Second, the choice made by the State VR agency in the payment system to be used (EN payment system versus traditional VR reimbursement payment system).

The following examples are used to illustrate the potential issue:

Example 1 –

John is an SSDI beneficiary who is receiving services from his State VR agency. In collaboration with his VR counselor he has developed an IPE. John recently received a Ticket in the mail and understands this to be a new option for getting the services he needs to reach his employment goal. John considered using his ticket to get support services from a local EN that are not a part of the planned services he is receiving from VR.

However, before he is able to pursue this path, he receives a notice from SSA indicating that his Ticket has been assigned to the State VR agency. John, with the support of an advocate from the PABSS project, is able to negotiate a plan to continue his planned services with VR while at the same time reassigning his Ticket with the local EN. The Employment Network was agreeable to accepting the reassigned ticket in light of the fact that (1) outcome payments would be made to both the VR agency and the EN for John's ticket, and (2) the EN would receive an acceptable portion of the total outcome payment for services they would provide.

If a beneficiary has assigned his or her ticket to more than one EN at different times and more than one EN requests payment, then SSA can split the payment. In splitting the payment, SSA will consider the contribution of the services provided by each EN toward the achievement of the milestone or outcome.

If John had been working toward his employment goal with the State VR agency for a considerable amount of time, and VR's investment was significant, John's success in finding an EN to accept his reassigned ticket would likely have been compromised. Given the likelihood that the greater investment and consequent share of outcome payments would be made to the VR agency, the financial incentives will in many cases be insufficient to secure investment from another EN.

Example 2 –

Linda, an SSI recipient, is actively working with her State VR agency toward her employment goal. She is participating in an extended training program as a component of her IPE. Prior to receiving her Ticket in the mail, Linda's VR counselor informed her of the fact that the state VR agency would be providing services as an EN. Linda agrees to assign her Ticket to VR. At the time the Ticket is assigned, the VR agency chooses to be paid for Linda's services under the traditional VR cost reimbursement program.

As Linda nears completion of her training program she decides to reassign her Ticket and access job placement services through a different employment network in her local the community, based on the advice of some of her friends who have had positive experiences working with the EN. However, Linda's Ticket is not accepted by several ENs that she ultimately contacts based on the fact that their ability to receive any outcome payment on the Ticket is unlikely.

A state VR agency and an EN may receive payment for serving the same beneficiary only in instances where the State VR agency serves the beneficiary as an employment network. If a state VR agency opts for and is paid under the cost reimbursement payment system, as is the case in Linda's situation, then a subsequent payment cannot be made on the same ticket to an EN. Conversely, if an EN (or a State VR agency serving as an EN) is paid under one of the two EN payment systems with respect to an individual's ticket, a subsequent payment cannot be made on the same ticket to a State VR agency under the cost reimbursement system.

Under other circumstances, Linda appears to be a good Ticket candidate in light of her training and readiness to begin employment. However, the fact that VR will meet the requirements to request and be paid under the VR cost reimbursement system before any EN outcome payments can be requested will make her an unlikely choice for ENs. Unfortunately, Linda was not made aware of the implications that these funding options and choices made by agencies would ultimately have on her ability to exercise control.

Given the potential negative impacts that decisions made by State VR agencies and ENs regarding payment options can hold, it is critical that beneficiaries be fully informed and educated early in the process. Only after being armed with this complete information will beneficiaries be able to successfully evaluate and choose the most appropriate path for pursuing their employment goal.

Unfortunately, it is unlikely that VR counselors or EN staff members are themselves fully cognizant of these payment system issues, or even likely to disclose them to beneficiaries if

understood. As a result, beneficiaries may find the need for advocacy support in pursuing information and negotiating related conflicts in this area.

In addition to understanding the pros and cons of Ticket assignment and reassignment, beneficiaries must also be made aware of any collaborative agreement between the State VR agencies and ENs and the opportunities afforded by these agreements to access needed services and supports across agencies and providers.

Recommendations

1. **Modify Written Ticket Materials** - SSA should modify the written materials provided to beneficiaries with their Ticket to inform them of the consequences of signing an IPE with a State VR agency on their Ticket eligibility and their requirement to make timely progress in the use of their Ticket. This information should inform them of their right to unassign the Ticket from the VR agency and indicate that the VR agency may have a claim on payments that result to the VR agency should they unassign their Ticket from the agency and assign it to another EN.
2. **Modify IPE Development Procedures** - SSA and the Rehabilitative Services Administration (RSA) should insure that VR agencies inform Ticket holders of the consequences of signing an IPE on their rights under the Ticket program. Beneficiaries should indicate that they have been informed of these consequences at the time of IPE signing.

Concern #9 - Beneficiaries may assign their Ticket to an EN and later have the EN terminate the Ticket assignment, particularly in situations where the individual is viewed as too costly to serve, thereby making it difficult for the beneficiary to later reassign the Ticket to another EN.

While most Social Security Disability beneficiaries in cash benefit status between the ages of 18 and 64 will be eligible for a ticket, the type of disability benefit they receive will have direct bearing on how they are viewed by ENs. ENs, particularly those with little or no prior experience in providing employment services to SSA beneficiaries, may initially accept an individual's Ticket, but subsequently decline to provide services after they learn the details of the individual's benefits status and the work incentives available to the Ticket holder.

Under the Employment Network payment system, ENs may receive payments from the Social Security Administration for up to a maximum total of 60 outcome payment months for a particular beneficiary using their ticket. In order to qualify as an outcome payment month, the beneficiary must receive no SSDI or Federal disability-based SSI payments as a result of their work and earnings. In determining whether gross earnings are sufficient to eliminate cash benefit, all applicable exclusions and work incentives are applied.

For SSDI beneficiaries, attainment of an outcome payment month is contingent on the following:

- The individual has completed a Trial Work Period (TWP);

- The individual is in or beyond the Extended Period of Eligibility (EPE), having had a cessation month and grace period (3 months of payable benefits during or beyond the EPE in spite of SGA level earnings); and,
- The individual is determined to have gross monthly earnings that constitute SGA after all work incentives are considered.

Based on past work history and earnings levels, there will be great variation between SSDI beneficiaries in terms of where they are in their TWP or EPE eligibility when they begin participation in the TTW program. It is likely, however, that even those who have not completed any TWP months prior to assigning their ticket will be in a position for cash benefits to stop after four years *if they are making timely progress in their IWP*. This is due to the fact that in order to meet the requirements for “timely progress” reviews in the Ticket program, an individual will need to have completed a total of nine months of SGA level work (SSA work incentives not considered in this determination) by the end of the 4th year of participation – or Ticket month 48. Given that the TWP amount is lower than the SGA level, SSDI beneficiaries meeting timely progress requirements will have concluded their TWP by this time. Consequently, by the end of Year 4 at the latest, an SSDI beneficiary who has met his or her timely progress requirements will begin the extended period of eligibility. Following attainment of their cessation month and grace period, they will be in a position for cash benefits to stop when gross monthly earnings – minus allowable work incentives – constitute SGA.

While an outcome payment month for an SSDI beneficiary may be attained with gross monthly earnings at the SGA level, the same does not hold true for SSI recipients. In fact, given the 1619a provision, SSI recipients may continue to receive a cash benefit until the point in time that their countable income (after exclusions and work incentives are applied) results in the person exceeding their break even point. The break-even point is the point at which income increases to the level that reduced the recipient’s SSI cash benefit to zero. For an SSI recipient with no unearned income and work incentives in use, the break-even point is \$1189.00 in 2003.

The break-even point will vary significantly from person to person based on receipt of inkind support and maintenance or any other type of unearned income. Additionally, the use of work incentives will impact an individual’s break-even point. For example, for some SSI recipients using the Student Earned Income Exclusion, gross monthly earnings may need to be as high as \$2,495.00 in some months during a calendar year to result in the loss of their cash benefit.

The TWP and the EPE do not apply to the SSI program. Instead, a person begins to experience a proportionate reduction in their SSI cash benefit as soon as they have countable income. Therefore, while in some instances a higher level of earnings may be required for SSI cash benefits to stop, unlike SSDI beneficiaries, SSI recipients are in a position to lose their cash benefit if earnings are high enough as soon as they begin work.

ENs who understand these benefit implications on their ability to obtain payment are very likely to weigh these factors and prioritize services to some beneficiaries over others. Conversely, however, while ENs may in many instances perceive greater incentives in serving SSDI

beneficiaries with Tickets as compared to SSI ticket holders, when considered from the perspective of the consumer, clearly the incentives to work and reduce reliance on the government benefit support system are stacked in favor of individuals receiving SSI.

Not only are SSI recipients assured of having a higher monthly income by choosing to work, but they are also provided access to health care coverage under Medicaid for an indefinite period of time under Section 1619(b) as long as eligibility requirements are met. SSDI beneficiaries, by comparison, may be in a position of losing a cash benefit that is greater than their potential for monthly earnings, while at the same time facing limits with their extended Medicare provisions.

Recommendations

As ENs come to understand the impact of various SSA work incentives on the cash benefit status of Ticket holders, they may become unwilling to provide services to individuals who have already assigned Tickets to them. Anecdotal evidence from BPAOs and PABSS programs indicates that at least a few beneficiaries have had a difficult time getting ENs to provide services as specified in their IWPs. Since Ticket assignment exposes the beneficiary to the TTW program's timely progress requirements, it is essential that SSA carefully monitor the extent to which ENs are accepting Ticket assignments and then not aggressively providing all services specified in an individual's IWP.

1. **Insure Access to Required Services** - SSA should insure that all TTW evaluation activities, particularly the beneficiary survey, will investigate the extent to which individuals receive the services specified in their IWPs. In addition, SSA should review its regulations and operating procedures to determine the actions that should be taken in situations where a beneficiary is not receiving specified services.
2. **Increase Awareness of Legal Advocacy Services** - SSA should take all measures necessary to insure that beneficiaries are fully aware of the role and availability of legal advocacy services to support them in resolving conflicts with ENs and/or appealing unfavorable decisions by the multiple entities likely to be involved with a beneficiary participating in the TTW program. ENs should be fully aware of the function of the PABSS program in their state and be able to direct beneficiaries to the PABSS program for services and support.

Concern #10 - Beneficiaries may receive incomplete or inaccurate information from a Benefits Planning, Assistance, and Outreach (BPAO) program that could (1) prevent the beneficiary from making an informed choice regarding assignment of his or her Ticket, or (2) adversely affect an individual's financial status when increased earnings dramatically affect the individual's benefit status or health care coverage.

Before providing services to beneficiaries, benefits specialists in SSA funded BPAO programs are required to attend a five-day training class on SSA programs and work incentives conducted by one of three Regional Training Centers (RTCs). The RTCs are operated by Virginia Commonwealth University (Regions III, IV, VI, and IX), Cornell University (Regions I, II, and V), and the University of Missouri (Regions, VII, VIII, and X) . These trainings are based upon a

standardized curriculum, developed under contract by Cornell University and approved by SSA, which has been extensively field-tested and updated annually. After attending the training class, the prospective benefits specialist must successfully complete a field assignment that tests knowledge of general SSA information and specific work incentives. Benefits also receive an additional two days of training on other benefit programs (TANF, Food Stamps, HUD, etc.) within six months of the initial training.

After completing the field assignment, the benefits specialist is allowed to deliver services in the local BPAO. There are no specific performance standards that the programs are required to meet, other than to fulfill all aspects of their cooperative agreement with SSA. After beginning to deliver services, benefits specialists receive extensive technical assistance provided by the RTCs, attend two-day follow-up training sessions, participate in distance education courses, receive information through web sites and list serves, and communicate regularly with other benefits specialists in their state and region.

The RTCs provide only training and technical assistance. They do not formally monitor the delivery of services by the BPAOs. In a number of instances, particularly with new benefits specialists, staff from the RTCs may review some or all of the benefits analyses and benefits plans developed by a particular specialist for accuracy and completeness. However, the purpose of the analysis and plan reviews are to verify that the specialist has acquired the competencies taught in the five-day class session, and to target specific technical assistance, rather than to monitor the quality of services provided by the BPAO.

SSA program regulations and work incentives are extremely complex and any inaccurate or incomplete information provided to beneficiaries is a serious concern. Instances in which a benefits specialist has provided inaccurate information or made inappropriate recommendations to beneficiaries have occurred. These instances are often reported to the RTCs and the PABSS programs, which share this information with the SSA Office of Employment Support Programs (OESP). OESP works with the BPAO program to correct any mistakes that may have been made, and the RTCs provide additional technical assistance to reduce the likelihood that mistakes will be made in the future.

Complicating this situation is the fact that many other entities are also providing benefits planning and assistance services to beneficiaries. Personnel employed by ENs, Work Incentive Grants (WIGs), Medicaid Infrastructure Grants (MIGs), State VR agencies, Centers for Independent Living (CILs), community rehabilitation programs (CRPs) and other agencies all provide information on SSA work incentives on a daily basis. Training for these organizations is not standardized and the quality of services provided is inconsistent. In comparison, the quality of services provided by the BPAOs is generally high, particularly in relation to the information provided by other organizations involved in the implementation of the Ticket legislation. BPAOs routinely encounter beneficiaries who have received inaccurate information from an EN, the Program Manager, a Protection and Advocacy organization, a State Vocational Rehabilitation agency, or even an SSA field office. Correcting the inaccurate information provided by others is a major function of the BPAOs (Kregel, 2002).

Recommendation - To further improve the quality of services provided by BPAOs, SSA could consider conducting program audits of the benefits analyses and benefits plans developed by local specialists. Given the fact that there are 116 local BPAO programs and nearly 150 individual sites, monitoring the telephone contacts of these programs might prove to be impractical. However, SSA could review a number of analyses or plans developed by benefits specialists through a simple file review that could be conducted on a regular schedule. Such a monitoring function would require a cadre of highly skilled and experienced experts to detect mistakes and inaccuracies in these highly detailed reports.

1. **Implement Quality Assurance Procedures** - SSA should investigate and implement an array of quality assurance strategies to insure that information provided by BPAOs is complete and accurate. This quality assurance initiative could take the form of formal program audits, state-based technical assistance and support, or peer-to-peer support and monitoring.
2. **Coordinate Training and Quality Assurance Across Multiple Federal Systems** - SSA should work with its Federal and State partners to insure that beneficiaries receiving benefits planning and assistance services from MIGs, WIGs, One-Stop Centers, VR agencies receive high quality services. The training provided to individuals providing benefits planning services in these other systems should be equivalent or superior to the training provided to specialists in the SSA BPAO program.
3. **Provide Access to Advocacy Services to Rectify Mistakes** – BPAO program and individual benefits specialists must be held accountable for their actions and recommendations that may have significant negative impacts on a beneficiaries financial or physical well being. If inaccurate or incomplete information is provided by a BPAO, the beneficiary must have free and immediate access to a PABSS program to explore all options available to rectify the results of inaccurate information and insure that such mistakes are not made in the future.

Concern #11 - Beneficiaries may be victims of a conflict of interest in situations in which an entity serves more than one role in the overall TTW initiative, or circumstances in which an EN or VR agency would be adversely impacted by individuals taking full advantage of work incentives to which they are entitled.

In the implementation of the TTW program, conflicts of interest can take least two forms, both of which may have adverse consequences for beneficiaries attempting to obtain objective advice and quality services from ENs, State VR agencies, BPAOs, and PABSS programs. The first form of conflict of interest occurs when a single agency or entity may provide services as an EN and a BPAO, a VR agency and a BPAO, or a PABSS program and a BPAO. In the initial 13 state Ticket rollout, each of these situations occurred.

In two of the initial 13 Round 1 rollout states (Massachusetts and South Carolina), the State VR agency also served as a BPAO for the state. As the Ticket is rolled out in all 50 states, 14 State VR agencies are serving as SSA funded BPAOs. This creates a potential conflict of interest. It may be to the advantage of the State VR agency to identify individuals contacting the BPAO

who may be viewed as “excellent candidates” for Ticket assignment and encourage, or pressure, these individuals into assigning their Ticket with the State VR agency, to the exclusion of other ENs in the state.

It should be pointed out that a potential conflict of interest does not necessarily mean that beneficiaries are harmed or that an agency may not be acting in the individual’s best interest. The Cornell/Lewin Preliminary Process Evaluation Report (Lewin Group, 2003) points out that VR staff interviewed in Massachusetts and South Carolina felt that having the VR agency serve both functions led to enhanced service integration and improved quality of services. However, if this arrangement led to reduced competition among the VR agency and other ENs, or if individuals were not made aware of all ENs available to them, this potential conflict of interest could have a direct, negative effect on beneficiaries and limit the range of choices available to them.

A similar situation occurs when an EN also serves as a BPAO. In the Round 1 Ticket rollout, a sizable number of ENs also served as BPAOs. While SSA policies require BPAO grantees to describe the procedures they will use to insure that the BPAO program is independent from the EN portion of the agency, it is entirely possible that the BPAO staff would identify individuals who might be viewed as likely candidates for Ticket assignment and encourage them to investigate the EN services provided by the agency. Similarly, in at least two states, the State Protection and Advocacy (P&A) also serves as a BPAO for the state. While these P&A agencies have taken steps to insure that the BPAO is operationally, and in one case physically, separate from the P&A, it is conceivable that situations can arise in which a P&A is investigating and advocating on behalf of a beneficiary against itself.

The second form of conflict of interest involves situations in which an EN or State VR agency attempts to provide information and guidance to a beneficiary regarding his or her benefit situation and options. ENs, whose payment are contingent on a beneficiary moving into non-pay status, may be unlikely to share information or promote use of work incentives or other options that will lengthen the time that the beneficiary spends in cash payment status. Therefore, in spite of the tremendous value that these work incentives hold, if beneficiaries are relying on ENs for assistance, it is likely that they will be uninformed or even openly discouraged from taking advantage of them.

This issue is further complicated in situations where ENs have limited the access that beneficiaries have to other providers of benefits assistance services. Anecdotal evidence suggests that some ENs have reportedly been hesitant or unwilling to partner with and refer individuals to local BPAO projects. Additionally, some beneficiaries have reported being informed by ENs that in order for the EN to accept their ticket, the beneficiary must agree to receive their benefits assistance from them as well. In situations where the beneficiary’s EN of choice additionally serves as the BPAO project for the area, these conflict of interest and limited access issues are magnified for the consumer.

The issues outlined above similarly apply to State VR agencies serving beneficiaries as an Employment Network. In addition to having a vested financial interest in the individual’s loss of cash benefits, State VR agencies have limited resources and inadequately trained staff to respond to beneficiaries’ questions about benefits, health care, and other programs.

Recommendations

Potential conflicts of interest issues occur throughout the TTW program: (1) state VR agencies serving as BPAOs; (2) the same private organization serving as both an EN and a BPAO; and (3) organizations serving as both P&A agencies and BPAOs. SSA should take all necessary steps to insure that potential conflicts do not limit the options available to beneficiaries attempting to obtain objective, accurate information about the program and the impact of participation on their benefits, including the use of available work incentives.

1. **Review and Revise Conflict of Interest Policies** - While some protections are in place to insure that these potential conflicts do not result in disputes among providers or poor service to beneficiaries, SSA should consider a review of potential conflicts of interest, and develop conflict of interest policies.
2. **Modify Information Materials** - Informational materials provided to beneficiaries should encourage them to seek impartial information from BPAOs or PABSS programs, and not rely exclusively on information provided by a VR agency or EN regarding work incentives available to them and/or the impact of Ticket assignment and earnings in their benefits.
3. **Constant Vigilance by the TTW Network** - Identifying and preventing conflicts of interest should be a major focus of all individuals and organizations participating in the TTW initiative. If a PABSS program, EN, BPAO, PM, VR agency, or any other member of the TTW initiative believes that an individual or organization is acting in a way that creates a potential conflict of interest, this concern should be immediately reported to SSA, as well as the PABSS program in the individual state.

Summary

The TTW program is designed to optimize consumer choice and control over their careers, as well as the services and supports they require to achieve their employment goals. While in theory, beneficiaries are fully able to assign, unassign, and reassign their Tickets to a provider agency that best meets their needs, thereby increasing competition among providers and improving service quality, in practice that are many factors that constrain consumer choice. Lack of specific facts about the Ticket program, incomplete information the impact of employment on benefit status and health care coverage, and insufficient availability of employment supports limit individuals' ability to benefit from the program. In addition, many members of the TTW implementation network of VR agencies, ENs, BPAOs, and PABSS programs are struggling with the complexities of the program and are having a difficult time supporting the participation of Ticket holders. In this environment, the potential for intentional or unintentional exploitation of beneficiaries is significant. There is an urgent need to improve advocacy services for TTW participants.

The nationwide network of PABSS projects is integral to the delivery of effective advocacy services for TTW participants. PABSS program can engage in effect legal advocacy to insure that all the rights of Ticket holders are maintained as they participate in the program and enter employment. It is recommended that the ability of PABSS programs to directly represent beneficiaries and conduct systems advocacy activities be expanded. However, other elements of the national TTW initiative are equally important in insuring that participants are able to make informed choices and access all services necessary for employment success. The Program Manager, VR agencies, ENs, and BPAOs must all be involved in providing coordinated, accurate information to beneficiaries, eliminating any real or perceived conflicts of interest, and providing high quality services in accordance with consumer choices and preferences.

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List of Acronyms

ADA	Americans with Disabilities Act
ADD	Administration on Developmental Disabilities
BPAO	Benefits Planning, Assistance, and Outreach
CAP	Client Assistance Program
CDR	Continuing Disability Review
CIL	Center for Independent Living
CRP	Community Rehabilitation Program
DD Act	Developmental Disabilities Assistance and Bill of Rights Act of 1975
DHHS	Department of Health and Human Services
EN	Employment Network
EPE	Extended Period of Eligibility
EXR	Expedited Reinstatement
FO	Field Office
HRSA	Health Resources and Services Administration
HUD	Department of Housing and Urban Development
IPE	Individual Plan for Employment
IRWE	Impairment Related Work Expenses
IWP	Individualized Work Plan
MCHB	Maternal and Child Health Bureau
MIG	Medicaid Infrastructure Grant
NAPAS	National Association of Protection and Advocacy Services
OAG	Office of Acquisition and Grants
OESP	Office of Employment Support Programs
P&A	Protection and Advocacy
PAAT	Protection and Advocacy for Assistive Technology
PABSS	Protection and Advocacy for Beneficiaries of Social Security
PADD	Protection and Advocacy for Persons with Developmental Disabilities
PAIMI	Protection and Advocacy for Individuals with Mental Illness
PAIR	Protection and Advocacy for Individual Rights
PASS	Plans for Achieving Self-Support
RSA	Rehabilitative Services Administration
RTC	Regional Training Center
SSA	Social Security Administration
TANF	Temporary Assistance for Needy Families
TBI P&A	Traumatic Brain Injury Protection and Advocacy System
TTW	Ticket to Work and Self-Sufficiency Program
TTW	Ticket to Work and Work Incentives Improvement Act of 1999
TWP	Trial Work Period
VR	Vocational Rehabilitation
WIG	Work Incentive Grant

Appendix A:
Background of Protection and Advocacy Systems

Appendix A: Background of the P&A Systems

The Protection and Advocacy System and the Client Assistance Program (CAP) comprise a nationwide network of congressionally mandated disability rights agencies. P&A agencies have the authority to provide legal representation and other advocacy services to all people with disabilities in every state and territory. Advocacy services can include investigations of alleged abuse and discrimination, educating policy makers, drafting state legislation, information and referral services, rights education and self-advocacy training (Gross, 2001).

This section will provide background information for each of the seven main P&A systems, summarized in Tables A-1 and A-2. Table A-1 provides an overview of the primary P&A systems, year of establishment, authorizing legislation, and FY 2002 appropriation, based on information provided by NAPAS. Table A-2 provides the eligibility requirements for each of the groups.

Table A-1 P&A Systems			
Title¹	Year Est.¹	Authorizing Legislation¹	FY 2002² (millions)
Protection and Advocacy for Persons with Developmental Disabilities (PADD)	1975	Developmental Disabilities Assistance and Bill of Rights Act	\$35
Client Assistance Program (CAP)	1984	Rehabilitation Act	\$12.2
Protection and Advocacy for Individuals with Mental Illness (PAIMI)	1986	Protection and Advocacy for Mentally Ill Individuals Act	\$32.5
Protection and Advocacy for Individual Rights (PAIR)	1993	Rehabilitation Act	\$15.2
Protection and Advocacy for Assistive Technology (PAAT)	1994	Technology-Related Assistance for Individuals with Disabilities Act	\$2.56
Traumatic Brain Injury Protection and Advocacy (TBI P&A)	1996	Traumatic Brain Injury Act	\$1.5

Table A-1 P&A Systems			
Protection and Advocacy for Beneficiaries of Social Security (PABSS)	1999	Ticket to Work and Work Incentive Improvement Act	NA
¹ Source: NAPAS (2002a) ² Source: NAPAS (July 17, 2003)			

Each P&A was designed to protect specific populations of individuals with disabilities, although there is considerable overlap in these populations. According to information provided on the NAPAS website (www.napas.org), in 32 states and territories all of the P&As and CAP are administered by a single non-profit organization or independent government agency. In 24 of the remaining 25 states and territories, the CAP is administered by a separate entity, and in one state both the CAP and PAIMI are administered by separate agencies.

Table A-2 Eligibility Requirements for P&A Services	
P&A System	Eligibility
PADD	Individuals having a severe, chronic disability which manifested before the age of 22 and which results in substantial functional limitations in three or more major life activities
CAP	Individuals seeking or receiving vocational rehabilitation services under the Rehabilitation Act
PAIMI	Initially limited to persons with a significant mental illness or emotional impairment who are inpatients or residents of a treatment facility, in 2000 the Act was amended to authorize P&As to serve those living in community settings, including their own homes.
PAIR	Individuals with disabilities who are not eligible for the PADD or PAIMI programs, or whose issues do not fall within the jurisdiction of CAP.
PATT	Individuals with disabilities who use, or could benefit from, assistive technology services and devices.
TBI P&A	Individuals who have significant disability due to traumatic brain injury and their families

PABSS	Individuals with disabilities who are recipients of Social Security disability benefits (DI or SSI).
Sources: NAPAS (2002b) and Gross (2001)	

PADD

History. The Protection and Advocacy for Persons with Developmental Disabilities (PADD) Program was created by Part C of the Developmental Disabilities Assistance and Bill of Rights (DD) Act of 1975 (42 U.S.C. 6041 *et seq.*). This first P&A system was instituted largely in response to well-publicized accounts of abuse in state institutions such as Willowbrook in New York (*New York State Association for Retarded Children v. Carey*; Rivera, 1972). In order to receive funds under the Act, the governor of each state is required to designate an agency as the P&A, independent of providers of rehabilitation services. The Administration on Developmental Disabilities (ADD) oversees the PADD program.

In 1994, amendments to the DD Act expanded the system to include a Native American P&A program. In 1996, Congress authorized the Health Resources and Services Administration (HRSA) through its Maternal and Child Health Bureau (MCHB) to establish a state grant program to improve access to health care and other services for individuals with TBI. These new three-year competitive grants, awarded for the first time in FY 2002 as part of the reauthorization of the TBI Grant Program, went to P & A systems in 28 states (each funded for \$50,000 annually), four U.S. territories and one tribal agency (\$20,000). On September 26, 2002, the Department of Health and Human Services (DHHS) announced \$1.5 million in grants to strengthen P&A services for individuals with TBI and their families. The grant program is administered by the HRSA-MCHB.

Authority. Under Section 143 of the DD Act, PADD programs are authorized to perform the following functions:

1. Pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups. The Final Regulations for the PADD program (45 CFR part 1386) preclude a P&A system from implementing a policy or practice that restricts the remedies that may be sought on the behalf of individuals with developmental disabilities or compromising the authority of the P&A to pursue such remedies through litigation, legal action or other forms of advocacy (Sec. 1386.21[c]). However, the above requirement does not prevent the P&A from developing case or client acceptance criteria as part of its annual priorities.
2. Provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities

3. Investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;
4. On an annual basis, develop a statement of objectives and priorities for the system's activities;
5. On an annual basis, provide opportunities for public comment, including individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical or mental impairments, and their representatives, as appropriate, non-State agency representatives of the State Developmental Disabilities Council, and the university affiliated program (if applicable within a State); and
6. Educate policymakers.

Sec. 14404 precludes use of PADD funding for any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual, compelling any person, institution, governmental entity service for such purpose; or asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

As one example of the authority invested in PADD programs, the following passage is cited from the NAPAS 2002 Annual Report (NAPAS, 2002a):

“At least 163 persons residing in Georgia’s system of group homes for people with mental retardation have died in last the four years under the State’s watch in circumstances shrouded in secrecy; a sizable number of those who died were malnourished, bruised, scalded and dehydrated, while others choked on food and died from other preventable causes. (Hardie, *Dying in Darkness: Day One – Ugly Results of State Care Revealed*, Atlanta Journal-Constitution, December 2, 2001). In response to these findings, the Georgia P&A immediately began the process of evaluating the state system by obtaining all records in state custody regarding these individuals and planning investigations of a number of the deaths. The agency is developing findings on the extent to which the state was failing to comply with applicable care standards.” (p. 16)

Eligibility. The DD Act requires that individuals served by the PADD meet the definition of developmental disabilities as defined in the Act as chronic and attributable to mental and/or physical impairments which must be evident prior to the age of twenty-two. They tend to be life long and result in substantial limitations in three or more of the major life areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency.

CAP

History. Although technically not a “P&A,” the Client Assistance Program (CAP) is considered

to fall under the P&A umbrella because of its focus on protection of rights of individuals with disabilities. The CAP program was established as a mandatory program by Section 112 of the 1984 Amendments to the Rehabilitation Act (29 U.S.C. 701 *et seq.*), with States and territories awarded CAP funds through formula grants. As with the PADD, the Governor of each state and territory designates a public or private agency that is independent of any agency that provides treatment, services, or rehabilitation, to serve as the CAP. The Rehabilitation Services Administration administers CAP programs.

Authority. CAPs are required to provide information on the available services and benefits under the Rehabilitation Act (later amended to also include the Americans with Disabilities Act of 1990) to individuals with disabilities in the state. Specifically, in Section 112(a), CAPS are authorized to:

1. Provide assistance in informing and advising all clients and client applicants of all available benefits under this Act, and, upon request of such clients or client applicants, to assist and advocate for such clients or applicants in their relationships with projects, programs, and services provided under this Act, especially with regard to individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs. In providing assistance and advocacy under this subsection with respect to services under this title, a client assistance program may provide the assistance and advocacy with respect to services that are **directly related to facilitating the employment of the individual** (emphasis ours).
2. Assistance and advocacy in pursuing legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with disabilities who are receiving treatments, services, or rehabilitation under this Act within the State. This assistance could be in the form of representation or mediation in due process hearings (34 CFR part 370).
3. Assure that to the maximum extent possible alternative means of dispute resolution are available for use at the discretion of an applicant or client of the program prior to resorting to litigation or formal adjudication to resolve a dispute arising under this section. These alternative means are further defined as good faith negotiation, conciliation, facilitation, mediation, fact finding, and arbitration, and any combination of procedures, that is used in lieu of litigation in a court or formal adjudication in an administrative forum, to resolve a dispute arising under this section.

The functions of the CAP are somewhat more limited than those of PADD and the other P&A systems in several ways. For example, CAPs do not have broad access and investigative authorities, nor do they have legislative authority to engage in education of policymakers or other systems advocacy activities. Assistance from the CAP is limited to services directly related to facilitating employment. In addition, the Final Regulations for the Rehabilitation Act (34 CFR part 370) preclude the CAP from initiating a class action suit on behalf of a State's Vocational Rehabilitation clients as part of its mandate to pursue legal remedies (Sec. 370.45).

The following example of CAP intervention is cited from the NAPAS 2002 Annual Report (NAPAS, 2002a):

“A woman with a spinal cord injury in Hawaii was denied funding for van modifications even though public transportation was neither feasible (4-6 hour round trip) nor affordable at \$120.00 a day. When threatened with termination of both transportation and attendant services, the Hawaii CAP filed a motion for a temporary restraining order and preliminary injunction, enabling her to continue employment during the VR appeal process. Eventually a settlement agreement was reached and the client was provided with the required van modifications.” (p. 7)

Eligibility. Individuals eligible for CAP are those persons who are seeking or receiving services from a Rehabilitation Act project, program or community rehabilitation program, especially with regard to individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs.

PAIMI

History. In 1986, following numerous reports of abuse and neglect in state psychiatric hospitals and inadequate safeguards of patient rights, Congress passed the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (42 U.S.C. 10801 *et seq*). This Act was modeled after the DD Act and extended similar protections to persons with mental illness who reside in facilities.

Until an amendment to the Act in 2000, eligibility under the PAIMI Program was generally limited to persons with a significant mental illness or emotional impairment who were inpatients or residents of a treatment facility (including any private or public residential setting that provided overnight care such as hospitals, prisons, jails and nursing homes). In late 2000, the Act was amended to authorize P&As to serve persons with a significant mental illness or emotional impairment who live in community settings, including their own homes. However, the amendment provides that this expanded authority shall apply only in years in which the congressional appropriation for the PAIMI Program reaches \$30 million or more (attained for the first time in fiscal year 2001). However, P&As are required by the amendment to give priority in their services to persons residing in institutional settings.

Authority. Each state has a PAIMI program that receives funding from the national Center for Mental Health Services. Agencies are mandated to:

1. Protect and advocate for the rights of people with mental illness; and
2. Investigate reports of abuse and neglect in facilities that care for or treat individuals with mental illness, if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

Agencies provide advocacy services or conduct investigations to address issues, which arise during transportation or admission to, during the time of residency in, or 90 days after discharge from such facilities. The system designated to serve as the PADD program in each state and territory is also responsible for operating the PAIMI program. Substance Abuse and Mental Health Services Administration, Center for Mental Health Services (CMHS) administers the PAIMI program.

Sec. 10805 of the PAIMI Act addresses specific authorities of the PAIMI P&As, and references the authorities vested in the PADD system under the Developmental Disabilities Assistance and Bill of Rights Act of 1975. This authority includes:

1. Investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;
2. Pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State; and
3. Pursue administrative, legal, and other remedies on behalf of an individual with mental illness
4. Have access to facilities in the State providing care or treatment;
5. Have access to all records of any individual who is a client of the system if (a) the individual or legal representative has authorized the system to have access; (b) the individual who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access (including by reason of death or unknown whereabouts); (c) the individual does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and with respect to whom a complaint has been received by the system or for whom there is probable cause to believe that such individual has been subject to abuse or neglect.

Prior to instituting any legal action in a Federal or State court on behalf of an individual with mental illness, the P&A is required to exhaust all administrative remedies where appropriate. If, in pursuing administrative remedies, the system, agency, or organization determines that any matter with respect to such individual will not be resolved within a reasonable time, the P&A may pursue alternative remedies, including the initiation of a legal action. This does not apply to any legal action instituted to prevent or eliminate imminent serious harm to an individual with mental illness.

As an example of an intervention, the following example is cited from the NAPAS 2002 Annual Report (NAPAS, 2002a):

“...the Nebraska P&A settled two negligence cases brought against women in a state facility who were sexually assaulted by male patients, and is seeking damages against the state for a woman with mental illness who went into a coma as a result of deficient care.” (p. 18)

Eligibility. Individuals eligible for PAIMI must have significant mental illness or emotional impairment and reside in residential facilities. These facilities, which may be public or private, include hospitals, nursing homes community facilities, board and care homes, homeless shelters, jails and prisons. PAIMI may address issues that arise during transposition or admission to, the time of residency in, or 90 days after discharge from such facilities.

PAIR

History. Although the Protection and Advocacy for Individual Rights (PAIR) Program was established by Congress as a national program under the Rehabilitation Act in 1978, the program was not funded by Congress as a formula grant until 1994, at \$5.5 million. From 1991 through 1993, the funding range was approximately \$975,000 to \$2.5 million. The budget appropriation for 2002 was \$15.2 million.

Although PAIR is funded at a lower level than PADD and PAIMI, it represents an important component of a comprehensive system to advocate for the rights of all persons with disabilities, and serves a potentially larger population. The system designated to function as the PADD program in each state and territory is also responsible for operating the PAIR program. Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration (RSA) administers PAIR. The Client Assistance Program (CAP) was established as a mandatory program by the 1984 Amendments to the Rehabilitation (Rehab) Act.

By statute, only P&As authorized by the DD Act are eligible to apply for PAIR grants. As with other P&A systems, PAIR grantees are required to develop annual objectives and priorities that are submitted to the public for comment.

Authority. PAIR has the authority under Title V, Section 509 of the Rehabilitation Act to pursue legal, administrative, and other appropriate remedies to protect the legal and human rights of individuals with disabilities who are not eligible for assistance under other advocacy programs.

As with the PAIMI Act, the language of the Rehabilitation Act with regard to PAIR references the authorities vested in the PADD system under the Developmental Disabilities Assistance and Bill of Rights Act of 1975, including:

1. Access to records and program income;
2. Pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities;
3. Provide information and make referrals to programs and services addressing the needs of individuals with disabilities; and
4. Develop objectives and priorities on an annual basis provide opportunities for public.

Eligibility. Persons eligible for PAIR are individuals with disabilities who are not eligible for the PADD or PAIMI programs, or whose issues do not fall within the jurisdiction of CAP. For example, an individual with a disability may utilize the services of the PAIR agency to challenge discrimination under the Fair Housing Act or the Americans with Disabilities Act.

PAAT

History. The Protection & Advocacy for Assistive Technology (PAAT) Program was created in 1994 when Congress reauthorized the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (42 U.S.C. 2201 *et seq.*), commonly referred to as the Tech Act. The Tech Act required each state to establish a lead agency to coordinate activities to facilitate access to, provision of and funding for assistive technology devices and services for individuals with disabilities. In 1998, the Act was amended and renamed The Assistive Technology Act of 1998. The Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research (NIDRR) administers PAAT.

Authority. The Tech Act included funding for P&As to assist individuals with disabilities and their family members, guardians, advocates and authorized representatives in accessing technology devices and assistive technology services through case management, legal representation and self advocacy training. The specific language of the Tech Act references previously established P&A systems and authorities, including the Developmental Disabilities Assistance and Bill of Rights Act, the Protection and Advocacy for Mentally Ill Individuals Act, and section 509 of the Rehabilitation Act of 1973.

The Tech Act further states that the PAAT is responsible for the following:

1. Conducting activities that are consumer-responsive, including activities that will lead to increased access to funding for assistive devices and services;
2. Executing legal, administrative, and other appropriate means of representation to implement systems change and advocacy activities;
3. Developing and implementing strategies designed to enhance the long-term abilities of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to successfully advocate for assistive technology devices and services to which the individuals with disabilities are entitled under other laws;
4. Coordinating activities with protection and advocacy services funded through sources other than this Act, and coordinating activities with the systems change and advocacy activities carried out by the State lead agency.

Eligibility. Individuals eligible for PAAT services are those who have a disability and who will maintain or increase their functional abilities with assistive technology, or who need help to protect their rights to access assistive technology from any funding source. For example, the Florida PAAT agency recently successfully challenged a Medicaid rule that prevented recipients

from obtaining a wheelchair costing more than \$586, which precluded anyone from obtaining a power or custom wheelchair (Smith, 2002).

TBI P&A

History. In 1996, the Traumatic Brain Injury Act (P.L. 104-166) established the TBI Protection and Advocacy system (TBI P&A). It was reauthorized as part of the Children's Health Act of 2000 (P.L. 106-310). This legislation authorized the Health Resources and Services Administration (HRSA) through its Maternal and Child Health Bureau (MCHB) to establish a state grant program to provide P&A services to individuals with TBI. These three-year competitive grants, awarded for the first time in FY 2002 as part of the reauthorization of the TBI Grant Program, went to P & A systems in 28 states (each funded for \$50,000 annually), four U.S. territories and one tribal agency (\$20,000). On September 26, 2002, the Department of Health and Human Services (DHHS) announced \$1.5 million in grants to strengthen P&A services for individuals with TBI and their families under the program authority of the Children's Health Act, Title XII, Section 1253 (42 U.S.C. 300d – 53). The grant program is administered by the HRSA-MCHB.

Authority. The Children's Health Act Title XII authorizes grants to existing state P&A systems (i.e., defined as those P&A systems established under part C of the Developmental Disabilities Assistance and Bill of Rights Act) to enable them to provide services to individuals with TBI. Title XII also lists the types of services that are authorized, specifically:

1. Information, referrals, and advice;
2. Individual and family advocacy;
3. Legal representation; and
4. Specific assistance in self-advocacy.

Eligibility. Individuals eligible for TBI P&A services are those who are disabled due to traumatic brain injury and their families. The TBI Act defined the term "traumatic brain injury" as an acquired injury to the brain, not including brain dysfunction caused by congenital or degenerative disorders or birth trauma, but which may include brain injuries caused by anoxia due to near drowning.

PABSS

History. The PABSS program was established in 1999 under Section 1150 of the Ticket to Work and Work Incentive Improvement Act (TTW) under the title *State Grants for Work Incentives Assistance to Disabled Beneficiaries* (20 CFR Part 411). The intent of TTW was to enhance health care, employment preparation and placement services to individuals with disabilities. The legislation also established a return to work "Ticket" program to allow individuals with disabilities to seek the services necessary to obtain and regain employment, thus reducing their dependency on cash benefit programs. Under TTW, Congress authorized the Commissioner of SSA to make payments to the P&As in each state and territory established under the DD Act, and to the P&A for Native Americans for services to SSA disability beneficiaries. P&As had undoubtedly provided some forms of assistance to Social Security beneficiaries prior to TTW. However, with increased emphasis on return to work initiatives for members of this population, P&As will have more financial resources to remove barriers and increase the employment opportunities for people with disabilities.

The allotments for the PABSS program were established in TTW as minimum of \$100,000 annually for the 50 states, the District of Columbia, and Puerto Rico. All other territories were allotted \$50,000 annually. P&As are required to submit annual reports on PABSS services to the Commissioner of Social Security and to the Ticket to Work Advisory Panel. The Social Security Administration provides oversight of the PABSS program.

Authority. PABSS programs are charged with providing education and training, information and referral, or legal based advocacy information to Social Security beneficiaries with disabilities who wish to secure or return to gainful employment. Individuals who do not receive cash benefits but are maintaining employment through the Ticket program are not currently eligible for advocacy services through the PABSS programs (Decker, September 26, 2002). PABSS programs also cannot assist in resolving issues directly related to SSA's decisions and actions, such as termination of Social Security benefits, reduction of benefits, or overpayments (Hummel, 2002). The restriction on actions involving the P&A administering organization appears to be unique among the P&A systems. For example, CAPs are frequently involved in actions involving vocational rehabilitation applicants and consumers who are determined ineligible, terminated from services, or denied services that the consumer believes to be essential (NAPAS, 2002a).

Sec. 1320b-21 of TTW addresses the PABSS system and, as with PAIMI, PAIR, and PAAT, references the authorities and mandates of the P&A system established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act ([42 U.S.C. 6041 et seq.](#)) for the purpose of providing services to disabled beneficiaries. The services provided to beneficiaries under the PABSS are described as:

1. information and advice about obtaining vocational rehabilitation and employment services; and
2. advocacy or other services that a disabled beneficiary may need to secure or regain gainful employment.

The Final Regulations for the Ticket to Work Program (20 CFR Part 411) address the role of the P&A in dispute resolution. Section 411.635 explains that a beneficiary has the right to be represented in the dispute resolution process under the Ticket program and that the State P&A system is available to provide assistance and advocacy services to beneficiaries seeking or receiving services from Employment Networks operating under the Ticket program including assistance in resolving issues at any stage in the dispute resolution process.

Eligibility. PABSS services are limited to individuals with disabilities who are recipients of disability insurance (DI) or Supplemental Security Income (SSI) based on disability. During the first year of operations (2001), PABSS programs assisted 10,755 individuals, including 8,023 in training events; 2,182 received Information and Referral services; and 550 provided individual representation.

Appendix B:
PABSS Program Terms and Conditions

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Terms and Conditions

The following conditions are placed upon the Protection and Advocacy (P&A) Systems receiving funds under grant announcement (SSA-OESP-01-1) authorized under section 1150 of the Social Security Act (as added by section 122 of P.L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999). P&A Systems must agree to these conditions in writing prior to receiving funds. The conditions are to ensure that this grant money is to be used solely for services to the Social Security Administration's (SSA) beneficiaries with disabilities. The grants are made for two specified purposes: 1) to provide information and advice about obtaining vocational rehabilitation and employment services, and 2) advocacy or other services that a beneficiary needs to secure or regain gainful employment.

Conditions:

- 4. Grant funds are for the purpose of providing services to beneficiaries with disabilities. P&A Systems must be available to serve all beneficiaries within the State who are entitled to Social Security Disability Benefits (Title II) or eligible for Supplemental Security Income (Title XVI) benefits based on disability or blindness. They may not expend funds to serve other than currently entitled or eligible beneficiaries as provided under Section 1150 of the Social Security Act.**
- 5. P&A Systems must attend SSA mandated training provided by the SSA technical assistance contractor. Funds may not be used for additional external training without prior approval of SSA.**
- 6. P&A Systems should spend grant funds to provide assistance and individual representation to Social Security beneficiaries with disabilities who are seeking vocational rehabilitation services, employment services and other support services from employment networks and other service providers. Such assistance and representation may include individual advocacy services and various forms of alternative dispute resolution, as well as investigating, negotiating, or mediating solutions to issues that arise in developing, implementing, and amending a beneficiary's individual work plan under the Ticket to Work and Self-Sufficiency program under section 1148 of the Social Security Act. P&As are to provide the following services in the order of priority listed below:**
- 7. Investigate and review any complaint of improper or inadequate services provided to a beneficiary with a disability by a service provider, employer or other entity, except SSA, involved in the beneficiary's return to work effort.**
- 8. Provide information and referral to Social Security beneficiaries with disabilities about work incentives and employment, including information on the types of services and assistance that may be available to assist them in securing or regaining**

gainful employment, particularly services and assistance available through employment networks under the Ticket to Work and Self-Sufficiency Program. Provide information and technical assistance on work incentives to beneficiaries with disabilities.

- 9. Provide consultation to and legal representation on behalf of beneficiaries with disabilities when such services become necessary to protect the rights of such beneficiaries. To the extent possible, alternative dispute resolution procedures should be used.**
- 10. Assist beneficiaries with disabilities in disputes before SSA involving work-related program decisions and benefits overpayments that are clearly a barrier to obtaining employment (see condition 5). PABSS personnel may not receive any legal fees for their service. Examples of permissible activity include**
- 11.**
 - Helping a beneficiary pursue the waiver or reconsideration of an overpayment due to excess earnings – up to and including any fact-finding hearing at SSA’s Office of Hearings and Appeals;
 - Accompanying beneficiaries to local SSA field offices;
 - Explaining the appeal process to beneficiaries and assisting in filling out necessary paperwork;
 - Pursuing appeals of continuing disability review determinations based on substantial gainful activity;
 - Giving advice to assure complete consideration of potential subsidies, impairment related work expenses and plans for achieving self support; and
 - Referring beneficiaries to other entities for support.
- 12. Provide information and technical assistance on work incentives to governmental agencies, employment networks and other service providers, and advocacy organizations.**
- 13. Advocate to identify and correct deficiencies in entities providing vocational rehabilitation services, employment services and other support services to beneficiaries with disabilities, including reporting to the program manager on identified deficiencies related to employment networks and other concerns related to the Ticket to Work and Self-Sufficiency program.**
- 14. A P&A System shall exhaust in a timely manner all administrative remedies, where appropriate, prior to initiating legal action in a Federal or State court. Such requirement, however, shall not apply with respect to any situation where the legal rights of any person would be compromised, or to a situation where no effective administrative remedies exist. If, in pursuing administrative remedies, the P&A System determines that a matter will not be resolved within a reasonable time, the P&A System may pursue alternative remedies. A P&A System shall be held to the prevailing standard of exhaustion of remedies provided under State and Federal law, and no additional requirements shall be imposed.**

1. PABSS System funds may not be used for litigation against the SSA, the Commissioner of Social Security or any official of the SSA because of decisions on program issues, (for example overpayments, continuing disability reviews, plans for achieving self support, subsidy, impairment related work expenses) rendered against current or former beneficiaries. Funds may be used for litigation against a Federal government agency only for issues related to discriminatory practices when the agency is a beneficiary's employer or prospective employer.
2. Any monies received through a court judgment pursuant to litigation using SSA Protection and Advocacy to Beneficiaries of Social Security (PABSS) funds may be used by the P&A System only to further the purpose of the PABSS program. Such funds may not be paid to contractors for legal services, or to employees of P&A Systems.
3. SSA must review and approve for technical accuracy prior to publication and use, all documents intended for public distribution. P&A Systems shall include on all documents intended for public distribution the following disclaimer: "SSA has reviewed the following publication for technical accuracy only; this should not be considered an official SSA document."